

SAN FRANCISCO PUBLIC LIBRARY



3 1223 06155 9325



5 CLOSED  
STACKS



GOVERNMENT INFORMATION CENTER  
SAN FRANCISCO PUBLIC LIBRARY

SAN FRANCISCO  
PUBLIC LIBRARY

REFERENCE  
BOOK

*Not to be taken from the Library*



3 1223 06155 9325



L500  
R9  
no. 18  
5/6/92

HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

Legislature



DOCUMENTS DEPT.

MAY 21 1992

SAN FRANCISCO  
PUBLIC LIBRARY

STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 6, 1992  
2:03 P.M.





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 6, 1992

2:03 P.M.

Reported by: DEN ZELS, Director  
Department of Transportation

Evelyn J. Mizak  
Shorthand Reporter





APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

MOLLY J. COYE, M.D., Director  
Department of Health Services

DANA GLUCKSTEIN, President  
Americans for a Safe Future

OCTAVIA DIENER, Member  
California Transportation Commission

LOUIS W. BARNETT, Member  
Unemployment Insurance Appeals Board

BENJAMIN T. HACKER, Director  
Veterans Affairs

PAM MANWILLER  
Union of American Physicians and Dentists

KYONG HWAN P. KIM, Member  
State Board of Education

JAMES VAN LOBEN SELS, Director  
Department of Transportation

SENATOR QUENTIN KOPP, Chair  
Senate Committee on Transportation





APPEARANCES (CONTINUED)

EUGENE V. REYES  
ALIANZA

GERALD W. JOHNSON, Managing Editor  
Small Business Enterprises

RUSTY SELIX, Legislative Advocate  
California Association of Councils of Government

JIM KNOX, Director  
Urban Affairs  
Planning and Conservation League





INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
MOLLY J. COYE, M.D., Director Department of Health Services	1
Statement of Intent by CHAIRMAN ROBERTI	1
Motion to Open Roll for Vote to Confirm	1
Requests for Clarification re:	
Holding Nomination on Floor	2
Scope of Hearing	3
Questions by SENATOR PETRIS re:	
Release Date on Tobacco Research Report	6
Copies Received for Final Review	7
Discussion of Report Findings at Press Briefing	7
Release of Report to Press	8
Meeting with Tobacco Education Oversight Committee and Constituency Groups	9
Mass Distribution of Report	10
Availability of Report	12
Reason for Delay in Mass Mailing of Report	13
Official Release Date	15
American Lung Association Contract and Affiliates	16
December 12 Contact of DHS Staff by ALA Staff Requesting Letter	17
January, Decrease in Available Funding	17





1		
2	January 21 Conference Call re: Augmentation	
3	of New Monies Doubtful	18
4	February 19 Notification to Confirm No	
5	Augmentation	18
6	February 20 Filing of ALA Lawsuit	18
7	Chronology of Events Does Not Suggest	
8	DHS Retaliation	19
9	Lung Association Affiliate Contracts	19
10	New Procurement Contracts in Spring, '92	19
11	Proportions of Those Funded	20
12	Shift in Nature of Proposals	20
13	All Decisions Made within Tobacco	
14	Control Program	21
15	Lack of Retaliation	21
16	Peer Review of Applications	22
17	Effect of Court's Decision on Prop. 99	23
18	Occupational Health Program Problems	25
19	Ability to Judge Programmatic Work	27
20	Extended Involvement in Area	27
21	Independent National Feedback on	
22	Quality of California's Program	28
23	Offer to Meet on Periodic Basis	29
24	Accusation of Incompetent Managers	29
25	Discussion on Scope of Hearing	30
26	<u>Witness with Concerns:</u>	
27	DANA GLUCKSTEIN, President	
28	Americans for a Safe Future	31
	Procedures for Adjudicatory Hearing	32
	Request for SENATOR MELLO to Represent	
	Rules Committee in Negotiations	33



1		
2	Possibility of Media Blitz	34
3	Excerpt from letter of DAN HIRSCH, President	
4	Committee to Bridge the Gap	35
5	Explanation of Committee's Plan by SENATOR	
6	MELLO	36
7	Meaning of "Being Held on Floor"	37
8	Questions by SENATOR MELLO re:	
9	List of Questions from ARNALDO TORRES	38
10	Bridge the Gap's Concerns with DHS Proposal	39
11	Request for Clarification by SENATOR CRAVEN	39
12	Selection of Administrative Law Judge	40
13	Appointment of Scientific Advisor to ALJ	43
14	Location of Hearing	44
15	Weight to be Given to Evidence at Adjudicatory	
16	Hearing vs. Prior Hearings	46
17	Airing of Safety Issues as well as Scientific	
18	Issues at Hearing	48
19	Attempt to Limit Hearing to State Laws Only	51
20	Need for 30-day Appeal Period after Completion	
21	of Hearing	53
22	Question by SENATOR MELLO of NANCY MICHEL re:	
23	Position of Legislative Counsel on DHS's	
24	Proposal	55
25	Statements by SENATOR MELLO re:	
26	Importance of Ward Valley Issue	56
27	Statement by SENATOR BEVERLY re:	
28	Nominee's Oath of Office	57
	Motion to Lift the Roll Call	57
	Committee Action	58





1		
2	OCTAVIA DIENER, Member	
3	California Transportation Commission	58
4	Background and Experience	58
5	Questions by SENATOR PETRIS re:	
6	Smoking on Amtrak	59
7	Current Ridership with Higher Fares	60
8	Motion to Confirm	61
9	Committee Action	62
10	LOUIS W. BARNETT, Member	
11	Unemployment Insurance Appeals Board	62
12	Background and Experience	62
13	Questions by SENATOR PETRIS re:	
14	Hiring of More Judges	63
15	Reason for Temporary Hires	63
16	Number of Vacancies	64
17	Salary	65
18	Recruitment	66
19	Reduction of Backlog	66
20	Need for Clerical and Backup Personnel	67
21	Average Office's Backlog	68
22	Problems in Van Nuys Office	68
23	Discussion of Prior Hearings	69
24	Principle Reason for Denial of Petition	70
25	Length of Time for Claim to be Processed	70
26	What Happens to Employee during Appeal Process	71
27	Percentage on Welfare	71
28	Fairness of System	72
	Suggestions to Improve System	73





1		
2	Motion to Confirm	74
3	Committee Action	74
4	BENJAMIN J. HACKER, Director Veterans Affairs	75
5	Background and Experience	75
6	Question by SENATOR BEVERLY re:	
7	Feelings about Marine Corps	76
8	<u>Witness in Support:</u>	
9	PAM MANWILLER, Representative State Employed Physicians, Dentists and Podiatrists	76
10	Motion to Confirm	77
11	Committee Action	78
12	KYONG HWAN P. KIM, Member State Board of Education	78
13	Background and Qualifications	78
14	Questions by SENATOR PETRIS re:	
15	Who Is Grace M. Davis	79
16	Ingredients to Improve Schools	80
17	Questions by SENATOR MELLO re:	
18	English Speaking Ability upon Arrival	81
19	English Proficiency	81
20	Future Career Choice	82
21	Motion to Confirm	82
22	Committee Action	83
23	JAMES VAN LOBEN SELS, Director Department of Transportation	83
24	Introductory Statement of Support by SENATOR QUENTIN KOPP, Chair Senate Committee on Transportation	83
25		
26		
27		
28		





1		
2	Statements by SENATOR MELLO re:	
3	Family Origin in Monterey County	85
4	Background and Experience	86
5	Questions by SENATOR PETRIS re:	
6	Smoking Policy on Amtrak	88
7	Litigation over Definition of Service	88
8	Train Is State-funded	89
9	Rise in Fares, Drop in Ridership	90
10	Subsidization of Other Runs	91
11	Amtrak Contract with State	92
12	Statements by SENATOR MELLO re:	
13	Concerns of ALIZANZA	93
14	<u>Witnesses in Support:</u>	
15	EUGENE REYES, Representative	
16	ALIANZA	93
17	Request by SENATOR MELLO to Enter Letters	
18	into Record	95
19	GERALD W. JOHNSTON, Managing Editor	
20	Small Business Exchange	95
21	Special Edition to Salute CalTrans	95
22	RUSTY SELIX, Legislative Advocate	
23	California Association of Councils of Governments	97
24	JIM KNOX, Director	
25	Urban Affairs	
26	Planning and Conservation League	98
27	Motion to Confirm	98
28	Committee Action	99
	Termination of Proceedings	99
	Certificate of Reporter	100
	Addendum: ALIANZA Letters	101





## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: We will now take up Molly Coye, Director of Health Services.

SENATOR MELLO: Mr. Chairman, do we have permission to have a camera?

CHAIRMAN ROBERTI: Yes, we have a request for a video tape from Alexander Media. Is there any objection? Hearing none, such will be the order.

Ms. Coye, on your appointment, I have to catch a plane in less than a half hour. So, I will not be here.

I intend to vote for you, however. Therefore, if you run up short, tomorrow, when I come back, I do intend to cast an affirmative vote, in case you run into troubles, which I don't think you will.

SENATOR MELLO: Mr. Chairman, may I ask you a question?

CHAIRMAN ROBERTI: Right.

If there's no objection from the Committee, I would like to open the roll, and then have a discussion so that I can be entered as a vote.

SENATOR CRAVEN: So move.

CHAIRMAN ROBERTI: So Senator Craven moves that the vote on confirmation be recommended to the Floor.

Secretary will call the roll.

Please, no one else vote except me. This is in the Robert's Rules, Rules Committee rules.



1 SECRETARY WEBB: Senator Beverly. Senator Mello.  
2 Senator Petris. Senator Craven. Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 SECRETARY WEBB: Roberti Aye.

5 CHAIRMAN ROBERTI: Senator Craven moves that the roll  
6 be replaced.

7 Senator, you are now the Chair of the Committee. I  
8 will see everybody Thursday.

9 SENATOR MELLO: Mr. Chair, before you leave, I just  
10 want to confirm and have you restate to the Committee what I  
11 asked you, just briefly, because a lot of the information  
12 regarding the agreement has just come out in the last hour or  
13 so. There are some differences between both sides.

14 I just want for the record your position, as you  
15 stated to me, was that you --

16 CHAIRMAN ROBERTI: Yes, we are going to do what we  
17 always do, and that is hold the nomination on the Floor for two  
18 weeks. That will give us sufficient time to work out any  
19 difficulties there may be as far as the agreement of Ward Valley  
20 and the confirmation of the Directors.

21 But since they really are not intertwined completely,  
22 Dr. Coye's nomination will proceed to the Floor, and then be  
23 held there.

24 I'm sorry I cannot stay, but if I don't leave now, I  
25 will miss my plane.

26 Senator Craven, you're the Chair.

27 SENATOR CRAVEN: Thank you very much.  
28





1           Mr. Chairman, before you leave, how deeply do you  
2 want to go into a regurgitation of what we've gone through  
3 several times in the past?

4           CHAIRMAN ROBERTI: Only on the items that Senator  
5 Mello had regarding differences of opinion as far as the Ward  
6 Valley.

7           Anything else as to confirmation really has been  
8 heard already.

9           SENATOR CRAVEN: Is Senator Mello in a position to  
10 speak to that?

11          SENATOR MELLO: Well, Mr. Chairman --

12          SENATOR PETRIS: Before we go on to that, there's  
13 some unanswered questions from last time that the doctor was  
14 going to comment on, followed by a letter. So, we have a little  
15 bit more to cover.

16          CHAIRMAN ROBERTI: That's fine.

17          SENATOR MELLO: On that point, I think that I just  
18 had a brief time to look over. There's some issues and  
19 questions I want to ask regarding the adjudicatory hearing that  
20 I think are very pertinent.

21          Secondly, there were some questions that Mr. Torres,  
22 who is here in the audience, Arnaldo Torres, or he's outside, he  
23 presented the Committee with a list of questions. His is not  
24 Ward Valley. His has to do with the farmworkers, and he had  
25 some questions there, a couple of them, and I think they're  
26 pertinent to the -- because they deal with farmworkers caught in  
27 the squeeze of the earthquake and other issues that want to be  
28





1 asked to Ms. Coye.

2 CHAIRMAN ROBERTI: I have ten more minutes.

3 SENATOR MELLO: So, Mr. Chairman, I think the fact  
4 that -- I'd rather see -- I mean, we've heard a lot of the  
5 information before, but I think the pertinent issues -- I'm  
6 going to support her confirmation to the Floor, but I want to be  
7 materially involved in making sure that everyone has a chance to  
8 be heard in the interim two weeks with their differences so that  
9 we hope to get a memorandum of understanding that does reflect  
10 the transcript of what Russell Gould said earlier, what Molly  
11 Coye said earlier, about how this adjudicatory hearing would  
12 proceed.

13 And based on the Legislative Counsel's letter, there  
14 are some unanswered deficiencies that I think have to be  
15 resolved. I don't think today, but I think they have to be  
16 brought up today and resolve in the next two weeks.

17 SENATOR CRAVEN: Certainly I have no objection  
18 following what you said.

19 My only thought was that, it was my understanding  
20 that we sort of brought this to a conclusion last week, with the  
21 exception of that to which you have referred today, and that  
22 which Dr. Coye is in a position to respond to today. And I  
23 thought if we would cover that off, we would really be sealing  
24 the whole matter out to get ourselves in a position to cast a  
25 vote, and then let the chips fall where they may, I suppose.

26 SENATOR MELLO: But the thing is, though,  
27 Mr. Chairman, I think that one person, Dana Gluckstein, who's  
28



1 testified before, has asked for permission to talk. She's flown  
2 up here from Los Angeles. She represents the group Bridge the  
3 Gap, Dan Hirsch and others, and I think it would be very unjust  
4 if she was not allowed to make a very short statement.

5 SENATOR CRAVEN: Was she invited?

6 SENATOR MELLO: Yes, I invited her.

7 I don't think people here have to be invited. I  
8 think this is an open meeting.

9 SENATOR CRAVEN: Well, I just asked a question.

10 I thought, you know, we had the round-up. We had a  
11 tremendous amount of testimony, if you will recall, last time.  
12 We heard from people we had never heard from before.

13 If we keep having it open, there's always going to be  
14 some individual who wants to come from Lodi to tell us what they  
15 think, which is fine. But somewhere along the line, we have to  
16 draw a line or else it's going to become a career.

17 SENATOR MELLO: Well, I don't plan -- I'm not going  
18 to filibuster the hearing. I'm not going to speak very long.  
19 I'm just going to raise about --

20 SENATOR MELLO: No, I'm anxious to hear what you have  
21 to say, Henry. I think that's very germane.

22 SENATOR MELLO: And then, as a courtesy to at least  
23 one person here, I would hope the Committee would hear this one  
24 person's statement.

25 SENATOR CRAVEN: Okay.

26 SENATOR MELLO: And now, Mr. Torres -- Arnaldo, donde  
27 esta?  
28





1           SENATOR CRAVEN: If it's the Mr. Torres I think it  
2 is, then --

3           MR. TORRES: No testimony.

4           SENATOR CRAVEN: That's fine.

5           SENATOR MELLO: What about the questions you  
6 submitted to me?

7           MR. TORRES: We just want them asked for the record.

8           SENATOR MELLO: All right. Can I give Ms. Coye a  
9 copy of your questions?

10          MR. TORRES: Yes.

11          SENATOR CRAVEN: Fine.

12          SENATOR MELLO: Okay, I'll give her a copy. In the  
13 two weeks' time, let her reply to you directly. I think that  
14 would be adequate.

15          SENATOR CRAVEN: That's fine.

16          Mr. Chairman, do you want to jump back in here again?

17          CHAIRMAN ROBERTI: Senator Petris has questions.

18          SENATOR PETRIS: Dr. Coye, maybe we can save time by  
19 referring to my letter of last week, or is it this week, May 1,  
20 May Day.

21                 Can you comment on any of the points that I raised  
22 there? I started with, last time we talked about the  
23 University report, and how much time, if any, elapsed between  
24 its proposed release date and its actual release. There's a  
25 huge gap there. And your intention, the intention of others.  
26 That's one of the questions.

27                 The other one is on how many requests for proposals  
28



1 were put out under 99 for local groups, and how many were  
2 placed, and how many are still in place? There's still a big  
3 dispute over whether or not there was a cancellation, and if so,  
4 how many?

5 Maybe you could help us by telling us what's  
6 happening right now.

7 DR. COYE: Let me just go through essentially three  
8 issues, because there's two parts of the second issue that you  
9 raised.

10 First with regard to the release of the tobacco  
11 report, as of today, 1900 copies have been distributed. And let  
12 me take you through the chronology so you can understand clearly  
13 how this came about.

14 In the week of January 7th, two copies of this were  
15 received from the researchers in the Tobacco Control Section for  
16 final review.

17 January 14th, Dr. Pierce, from the University of  
18 California, San Diego, one of the researchers, discussed these  
19 report findings appropriately at a press briefing sponsored by  
20 the American Heart Association in Texas. Our program staff knew  
21 of and had okayed, in so far as they need to, but they've been  
22 supportive of, Dr. Pierce appearing and presenting some of the  
23 results of that work.

24 SENATOR PETRIS: In Texas?

25 DR. COYE: Yeah, that was when it hit the press, on  
26 January 14th.

27 We first got press calls about that that evening of  
28





1 January 14th, and I was called at home about this and didn't  
2 know anything about it. The press staff had not -- you know,  
3 didn't know much about this at all. And so we said, "Let's get  
4 the report and look at it."

5 And the next morning, before I came into the office,  
6 I called in and I said, "I don't want to risk any accusations  
7 about this being sat on. Release it to the press now. Make it  
8 available to the press now."

9 And we have several reporters, including Associated  
10 Press, who are willing to meet with you and assure you that they  
11 had access to the report.

12 We only had physically one copy of it at the senior  
13 level in the Department. That was Xeroxed and FAXed out to a  
14 number of press. Other press people came to our press offices  
15 and looked through it.

16 Initially, in response to some press calls that first  
17 evening, the press office said, "We are looking at it, and we  
18 don't know yet when it will be released." And that got into the  
19 papers and generated a very public impression that we had  
20 delayed access for a long time. But in fact, there were  
21 multiple press people who got it beginning that very next day,  
22 within twelve hours, and we have good demonstration of that, or  
23 good evidence of that.

24 SENATOR PETRIS: Is that in the form of printed  
25 stories? I guess that's the best evidence.

26 DR. COYE: I don't know. I'll be glad -- I'll meet  
27 with you and give you all the evidence.  
28



1           SENATOR PETRIS: Well, if it's like some of my  
2 releases, they didn't print anything, so we'll see.  
3

4                       [Laughter.]

5           SENATOR PETRIS: That's not your problem.

6           DR. COYE: In any case, yes, I would say that we have  
7 very extensive confirmation of the fact that people had copies  
8 of this.

9                       From January 15th, that next day that I'm talking  
10 about, until February 19th, this was available to the press, or  
11 to anybody else, on request through the press office. That's  
12 normally -- as a matter of fact, there's -- normally, this  
13 wouldn't have even been out there until we did a formal mailing  
14 out as a program distribution. But once we had made it  
15 available to the press, it continued to be available through the  
16 press, and program staff were proceeding with the process of  
17 internal review. And they got an additional external review,  
18 and proceeding with, you know, cleaning up the typographical  
19 stuff and getting it ready for the procurement for the printing  
20 of 2,000 copies.

21                      In the meantime, on February 19th, I had invited the  
22 Tobacco Education Oversight Committee, and more than 15  
23 different constituency groups, including the Lung Association,  
24 to meet with me, because I wanted to hear their concerns in the  
25 midst of all of this controversy. And in our discussion, they  
26 said that they wanted to speed up; that they thought that the  
27 formal mailing out of the report should have already happened.

28                      I pointed out to them that it had been available





1 through the press, and many of them had in fact received copies  
2 that way. And that I was surprised. I didn't know that it had  
3 not been formally mailed out yet.

4 But Dr. Bal, Dileep Bal, who's the Program Director,  
5 assured me that it was in final typographical clean-up, or  
6 something like that.

7 SENATOR PETRIS: When was that?

8 DR. COYE: That's on February 19th.

9 And the next day, he furthered -- I think it's called  
10 a procurement order for the 2,000 copies to be printed. Those  
11 copies were all printed.

12 On March 30th, when the printing was done, we did a  
13 mass distribution of the more than 1900 copies, including  
14 distributions to all Members of the Legislature, the Tobacco  
15 Control Programs, county health departments, et cetera, with a  
16 very strong supportive cover letter from me.

17 SENATOR PETRIS: Maybe it depends on which dates  
18 we're talking about.

19 Last week, when I brought it up, I think you had  
20 indicated that it was released within 24 hours. I don't know,  
21 24 hours of what? Of the January date? The February date? Now  
22 we're talking March.

23 DR. COYE: No, it was released on January 15th, in  
24 that everybody who called in -- this is a very normal process.

25 SENATOR PETRIS: What is the title of that report?  
26 Is that "Tobacco Use in California"? Is that the title?

27 DR. COYE: I think -- I actually don't recall the  
28



1 exact words. I assume, yeah. It's the one that Dr. Pierce  
2 prepared in San Diego.

3 SENATOR PETRIS: I have a copy of a letter here to  
4 Dr. Bal from Lawrence Walleck, Doctor of Public Health. And he  
5 says, and I'll just quote a small part of it, this is February  
6 12th:

7 "I'm writing to you as a member  
8 of the Evaluation Advisory Committee  
9 for the Tobacco Education Program  
10 and as a public health professional  
11 concerned with one of the greatest  
12 threats to health in California. I  
13 was extremely dismayed to hear that  
14 the report, 'Tobacco Use in  
15 California,' authored by Drs. Pierce  
16 and Burns, has not been released."

17 And this was dated February 12th.

18 "On January 28th, the  
19 Evaluation Advisory Committee voted  
20 unanimously to urge the state to  
21 immediately release this valuable  
22 report."

23 So, according to him, it had not been released on  
24 January 28th, and of the writing of this letter, it had not  
25 been released.

26 And yet, you feel it was released --

27 DR. COYE: Well, it sounds like to me that we're  
28





1 talking about just a difference in the word "release." My  
2 sense of release was to make sure that something that was a  
3 very controversial report was available to the press while we  
4 proceeded with the internal process of getting it ready for  
5 this formal mailing out.

6 He's apparently referring to the formal mailing  
7 out. That formal mailing out was what was accomplished on  
8 March 30th. But that all of the information in there was fully  
9 available because what I had done in January.

10 SENATOR PETRIS: What would you have to do get it?  
11 Available to whom? The general public? The scientists?  
12 What's the distribution?

13 DR. COYE: When it's made available to the press,  
14 in that early stage, basically anybody who calls in can get it.

15 It's very important to understand, with a research  
16 report, the moment it comes in, or the next week, is not when  
17 you normally have it all ready and mail it out for that  
18 widespread distribution.

19 When I found out in that meeting on February 19th  
20 with the Tobacco Education Oversight Committee that it hadn't  
21 in fact been mailed out, which I looked at as a technicality in  
22 the sense there'd be no reason to delay that if we'd made it  
23 available to the press, which was the broadest coverage of it,  
24 when I --

25 SENATOR PETRIS: That's the early date?

26 DR. COYE: Yes.

27 When I found out that we hadn't in fact done the  
28



1 formal distribution mailing, at that point I was very  
2 surprised, and I said, "Can't we speed this up?"

3 And so the next day, they cut the order. And  
4 Dr. Bal told me that the reason that it had taken, you know,  
5 four weeks or five weeks, or whatever, was in part because they  
6 were handling all of the second procurement for the contracts,  
7 for the local-based contract system, and they'd just been  
8 swamped with that. And they hadn't gotten to the typographical  
9 clean-up and the procurement order.

10 And a lot of the attitude was, since it was already  
11 available through the press, that a lot of the information was  
12 out there and very clearly being discussed and debated, and  
13 everything.

14 So, as soon as it came to my attention that the  
15 formal release, in the wording of -- I'm sorry, the person who  
16 wrote to you --

17 SENATOR PETRIS: Not to me, to Dr. Bal.

18 DR. COYE: Yes.

19 So, I mean, at each stage, both within immediately  
20 finding out about the press statements on the 14th, and later  
21 finding out about the fact that the more formal mailing hadn't  
22 happened, we attempted to make it immediately available.

23 But the normal process would not have been even to  
24 have that press availability from the January 15th until March  
25 30th. Normally a press -- a research report doesn't go out  
26 until you do this formal business of procurement, printing up  
27 however hundreds of copies you're going to do, and then mailing  
28





1 it out. It's only because of all the controversy swirling  
2 around this that we pushed to get it out through the press  
3 initially.

4 SENATOR PETRIS: Well, I guess there's a difference  
5 between the report the press gets. That's probably a kind of a  
6 summary of its findings.

7 DR. COYE: No, no.

8 SENATOR PETRIS: The data that supported that  
9 didn't go with it to the press; did it?

10 DR. COYE: No. For anyone who wrote in, they could  
11 get initially the executive summary and eventually the whole  
12 report, and they could come in the same day, and A.P. did and a  
13 number of other press people, to our offices, because we only  
14 had one cope of the whole thing, and sit down and read the  
15 entire thing.

16 SENATOR PETRIS: How long is it?

17 DR. COYE: About that thick. I don't know the  
18 number of pages.

19 But, I mean, again, if that researcher had not gone  
20 ahead and talked about it there, the normal process would have  
21 been when we were physically capable of distributing 2,000  
22 copies, it would have gone out. But because it was  
23 controversial and got discussed before we had that many copies  
24 printed, the best we could do was say, "Either come read it  
25 here, or we'll Xerox them and we'll give you first the  
26 executive summary, and if you want more, then we'll give you  
27 the full thing."  
28



1           SENATOR PETRIS: So, the more or less official  
2 full release date was March 30th?

3           DR. COYE: Yes, depending on how you're using it.

4           SENATOR PETRIS: I have another letter from the  
5 Tobacco Oversight Committee -- Tobacco Education Oversight  
6 Committee, dated March 21. And that says that their committee  
7 met on March 16 and discussed the report. It's referred to as  
8 the "UCSD Surveillance Data Report". I guess that's the  
9 official title.

10                               "We were pleased to learn of  
11                               its imminent distribution."  
12 I guess they're referring to the later date that you referred  
13 to.

14           DR. COYE: Uh-huh.

15           SENATOR PETRIS: Well, that's still a long way from  
16 January, but I guess as of now, or at least as of the end of  
17 March, there's no more problem of distributing to the public,  
18 or the press, or anyone else who's interested.

19           DR. COYE: And there's absolutely nothing abnormal  
20 when you get a big research report like that in in early  
21 January, all the process of the further reviews, and everything  
22 else to get the 2,000 copies printed up and mailed out by the  
23 end of March, would have been all due speed for any of our  
24 normal operations.

25                               It's because of the controversy swirling around  
26 this, and the fact that we released it to the press before we  
27 had enough copies to make it generally available, that this  
28





1 whole thing came up.

2 SENATOR PETRIS: What was the controversy? Were  
3 they disputing the conclusions in the report?

4 DR. COYE: It was because of the 99, the Governor's  
5 proposal in the budget. That's what I mean by controversy.

6 SENATOR PETRIS: Oh, the other portion.

7 DR. COYE: Yes.

8 SENATOR CRAVEN: Do you have more, Senator Petris?

9 SENATOR PETRIS: Yes.

10 DR. COYE: There are two other issues that you've  
11 raised.

12 SENATOR PETRIS: That I raised in the letter.

13 DR. COYE: The next issue, and what I'm going to do  
14 is address first of all the American Lung Association contract  
15 itself, and then talk about the affiliates issue. You asked  
16 about both of those.

17 With regard to both of them, however, there was  
18 absolutely no retaliation, and I think that'll become clear to  
19 you as I go through the facts in the case.

20 The single largest contract in the entire Tobacco  
21 Control Program through any of the procurement cycles was the  
22 1.9 million that was contracted with the American Lung  
23 Association of California, and a further 400,000 augmentation  
24 that was added at our discretion for a mass media smoking  
25 cessation campaign. That's different from the big media  
26 campaign, obviously.

27 On December 12th, our program level staff, below  
28



1 Dr. Bal's level, and he wasn't even aware of all of this, was  
2 contacted by an ALA staff person from their headquarters who  
3 was concerned because they wouldn't be able to expend all of  
4 their monies within the time limit of the contract; that they  
5 in fact -- that there were plans within the ALA to begin to lay  
6 off staff. And they asked for a letter assuring the ALA that  
7 they would be able to extend their contract in order to expend  
8 the current remaining funds, not to get more money, but to  
9 expend the current funds, so that that person's job would be  
10 held secure. And that person dictated the content of the  
11 letter to our staff person, and it was fully within the  
12 discretion of our staff person to do this. It was an  
13 appropriate action. They prepared the letter and sent the  
14 letter to ALA.

15  
16 It said that the purposes of doing this, of  
17 extending the contract, was both to finish the work of the  
18 first contract, and also to allow them to prepare a submission  
19 for a second contract.

20 So, there was no commitment to funding a second  
21 contract. It was for them to prepare to compete in the next  
22 round.

23 Then, that was in December. By January, with  
24 looking at the decrease in total amount of under that would be  
25 available to fund the next cycle of the education grants, our  
26 staff was very concerned about whether they would want to  
27 renew. And again, this is at the program level, and it's  
28 appropriate for them at this level. Were very concerned about





1 whether they would want to again issue a contract as large as  
2 the ALA contract was, which would replace or be instead of  
3 10-15 grants of normal size of grants that we made.  
4

5 And given the lower amount of money available, and  
6 the scorings on the independent peer review of the ALA  
7 contract, they then contacted on January 21st the ALA. Three  
8 of our staff were jointly on a conference call with that same  
9 staff person in the ALA to tell them that -- to notify them  
10 that because future funding was going to be decreased, there  
11 was going to be less money available and more applications  
12 coming in, that it looked extremely doubtful that there would  
13 be a further augmentation, an addition of new monies, into the  
14 ALA contract.

15 On February 19th, our staff, again, notified ALA  
16 for sure, confirming this, that we would not augment the grant  
17 with new monies because there were 300 applications received  
18 for this new pot of money, and that there -- what they had  
19 communicated on January 21st, that it didn't look likely, was  
20 now confirmed.

21 On February 20th, the ALA lawsuit was filed.

22 I would suggest to you that, given the fact that in  
23 January, well before the filing of the lawsuit, that the  
24 program level staff -- none of this had any involvement from me  
25 or any senior level people, even Dr. Bal, although I would have  
26 concurred with all of the steps that were taken here -- that  
27 given the fact that they notified them well in advance that the  
28 formal notification was before, not after, the lawsuit filing,



1 that the chronology suggests more that the lawsuit was in  
2 retaliation against us for our actions than the other way  
3 around.

4 So, I think the chronology does not support this  
5 accusation at all. And as a matter of fact, if their suspicion  
6 was correct, during that January and February period, we would  
7 have been attempting to curry favor with them to get them not  
8 to file a lawsuit, not saying to them: we don't think we're  
9 going to be able to fund your lawsuit [sic]. It really, I  
10 don't think, holds water as a charge.

11 The next issue is the issue of the Lung  
12 Association affiliate contracts. Of the eleven -- they --  
13 initially there were eleven Lung Association affiliates that  
14 had contracts, and now there are three of them that are funded.  
15 Of those eleven contracts, only nine applied for new funding in  
16 this current cycle. One of those didn't even meet the minimum  
17 requirements. So, we're down to eight out of the eleven.

18 Now, of those eleven or even eight, many of them  
19 had already been refunded, in some cases multiple times.

20 This current procurement round in the spring of '92  
21 that we're talking about, we had to award only \$18 million in  
22 awards out of 100 million in funding requests. So, we had to  
23 eliminate a fair number of applicants. This was in comparison  
24 with 53 million to fund these in the last cycle.

25 This was clearly and explicitly stated as a  
26 brand-new procurement. There was no assumption going in that  
27 someone who'd been funded in prior rounds would be funded this  
28



1 time. It was clearly stated that this was an open competition.

2 Of those eight, two were funded initially and one  
3 on appeal. Of the total 300 applications, a total of 99 were  
4 finally funded; eight of those on appeal. So, the proportions  
5 are very, very close in terms of ALA affiliates in comparison  
6 with the entire field.

7 Furthermore, all of these proposals were peer  
8 reviewed by nearly a hundred expert reviewers from across the  
9 state and the country. And the major direction, if you look at  
10 the shift in the nature of the proposals that were funded, is  
11 that far more focusing on Hispanic, African-American, Asian,  
12 Pacific Islander, Native American organizations were funded,  
13 that there's explicit directive in the initiative that we  
14 should go in that direction.

15 In the first round, many of those groups were not  
16 prepared and were not as competitive, and the ALA got a massive  
17 chunk of the money in the first round. But in this second  
18 round -- or I think it's the third round because there was  
19 augmentations right after the first round -- there was a real  
20 attempt on the part of program staff and reviewers to stake  
21 into account the nature of the organizations that were  
22 applying. And apparently, by those criteria, ALA did not do as  
23 well.

24 So again, the facts of the matter, they did well in  
25 terms of proportionate number of grants. They did -- certainly  
26 in terms of dollars it was a tremendous decrease, but that  
27 given the fact that there was a program decision to turn away  
28





1 from one, single, large grant of 1.9 million in the direction  
2 of these smaller community grants, is something that you  
3 certainly would have expected to see happen.  
4

5 And finally, these decisions were entirely made  
6 within the Tobacco Control Program. There was neither  
7 knowledge nor participation from the Deputy or myself, or any  
8 other of the senior level people within the Department. That's  
9 the way we want to conduct these things, and the way we have  
10 conducted them.

11 So, in order to suspect that there was a  
12 retaliation against the Lung Association, you would have to  
13 assume that there was some animosity on the part of our program  
14 staff towards the Lung Association. Most of those people are  
15 thoroughly committed to the same causes that the Lung  
16 Association has supported for years. They've worked closely  
17 together for years. If anything, I would largely suspect that  
18 the program staff were distressed by the reallocation of the  
19 funds and highly unlikely to try to retaliate against the Lung  
20 Association for taking steps that they may be very sympathetic  
21 with, in fact.

22 So, I think that while on the one hand it's very  
23 understandable to me why the Lung Association, because of the  
24 fact that they're very upset about the overall policy  
25 decisions, would see some discrimination or retaliation in  
26 this, that in fact, when you look at the patterns and the  
27 rationale, and the level of people who made the decisions, and  
28 the peer review participation in it, that in fact it doesn't



1 support any attempt to retaliate, or any reality of  
2 retaliation.

3           SENATOR PETRIS: Can you tell me a little more  
4 about peer review? You mentioned a hundred scientists  
5 throughout the state.

6           DR. COYE: What we have, I think it was either 20  
7 or 30 percent of them are from out of state, because part of  
8 the attempt is to have people outside of the state so that  
9 there's some objectivity, and just not all people who know the  
10 situation competing against each other.

11           But there's a peer review process and a ranking,  
12 and there's a -- first, as I understand it, a general cutoff  
13 line that's drawn to say that below that line, these  
14 applications are not even acceptable. Then there's a priority  
15 ranking above that line, and once that ranking has been  
16 forwarded by the peer review system, then there is a process by  
17 which within that upper tier, there is a re-sorting to make  
18 sure that both minority groups and geographical balance is  
19 achieved.

20           The Lung Association application barely made that  
21 first cutoff in the peer review. So again, our program level  
22 staff, when --

23           SENATOR PETRIS: Why was that? Was that a lack of  
24 ability to carry out the contract?

25           DR. COYE: I truly don't know all of the reasons.  
26 The one thing that the staff mentioned is that a very high  
27 priority was given to the ability to work with minority  
28





1 populations, or target effectively minority populations and the  
2 geographic distribution.

3 I'm not sure that that's the reason why. There may  
4 have been other more important reasons, but we completely don't  
5 get involved in this.

6 So, I'll just stop there.

7  
8 SENATOR PETRIS: Let me ask you about the effect of  
9 the Court's decision on the other part of it. What are your  
10 plans now?

11 DR. COYE: Well, first of all --

12 SENATOR PETRIS: Are you going to appeal? And if  
13 you are, you have a perfect right to. I wouldn't challenge  
14 that.

15 But my question is, where do we go from here?

16 DR. COYE: We will not appeal. I make this  
17 commitment and the Governor makes the commitment. We do not  
18 plan to appeal the decision.

19 As you know, we just got the final court order  
20 yesterday, and so, we're now reviewing what we need to do. And  
21 there's obviously hard decisions to make, including where we  
22 will take the money from in our services.

23 SENATOR PETRIS: Well, it's too early to tell.

24 So, the decision on the local contracts, that 99  
25 were awarded, whatever changes were made were not driven by a  
26 budget consideration? They were within whatever the budget  
27 amounts that were available?

28 DR. COYE: Yes, if I understand you correctly.



1                   They were not -- they were driven by the program,  
2 what it could achieve, and how much money was available to fund  
3 them, because there had to be a cutoff line in terms of  
4 funding.

5                   SENATOR PETRIS: What was that total? Was it  
6 around 15 or 16 million?

7                   DR. COYE: No. Just a second. I want to make sure  
8 I give it to you accurately.

9                   There were -- oh, I'm sorry, yes, \$17 million,  
10 roughly.

11                   SENATOR PETRIS: I thought it was somewhere in  
12 there.

13                   How long is that going to last? Is that done on a  
14 fiscal year basis or a calendar year, those contracts?

15                   DR. COYE: I honestly don't know. I'd be very glad  
16 to get the information and give it to you.

17                   SENATOR PETRIS: That's all right. I guess  
18 logically it would run like everything else --

19                   DR. COYE: I would assume at least, yeah.

20                   SENATOR PETRIS: Let me ask one other area, then  
21 I'll give you some breathing time.

22                   Have we answered the questions that I raised in the  
23 letter? I guess you have.

24                   I had also raised last time the question of some  
25 occupational health. I was interested in that because I've  
26 carried more than one bill. One of them created part of the  
27 program.  
28



1                   Without giving any names, I asked you last time  
2 about the problem, because I've been hearing a lot of static.  
3 I've been hearing some horror stories about things allegedly  
4 going on internally. And you described that as a disgruntled  
5 employee.

6                   However, that same employee has had very high marks  
7 from the Department over a period of time, and I think you had  
8 some good words for this person, too, at one time.

9                   Now I learn that she kept complaining about the  
10 deterioration of the Occupational Health Program in several  
11 different categories. One was the lead problem under Senator  
12 Torres's bill; another one was my problem of trying to identify  
13 what the work risks were from a health standpoint.

14                   I have the impression at one point, based on the  
15 legislation and the way the pioneers in the Department who  
16 administered it, it was one of the model programs for the whole  
17 country. And now I'm learning that it's just the opposite;  
18 that it's not holding up to that high standards of before.  
19 Morale is terrible in the Department. This one person in  
20 particular has now been informed of demotion with a severe cut  
21 in pay, after having pioneered this wonderful program.

22                   That's kind of unsettling, to say the least. I'm a  
23 little nervous about it because we had similar problems in  
24 other -- in the field of pesticides. I wish you had been there  
25 at the time these other problems came up. I have a hunch that  
26 you would have put your foot down, wouldn't have let it happen.

27                   But we had reached such a low state in the  
28





1 Department that regulated pesticide sales, registration and  
2 use, that the political appointees in that office were  
3 overruling the scientists. You've probably heard the story.  
4

5 Eighteen scientists just quit in disgust. They  
6 said, "It destroys the integrity of my work as a scientist to  
7 have me do this evaluation and advise the Department that this  
8 particular application should be rejected, either because it's  
9 a dangerous substance, or they just haven't supplied us with  
10 enough information to enable us to evaluate their own reports."  
11 They'd be overruled. The stuff would be sold, endangering the  
12 health of people. As I say, finally 18 of them quit.

13 Now, we haven't had that happen here, but I've been  
14 getting reports. I have to admit, some of them are anonymous  
15 because they're scared to death. There's been intimidation  
16 charged, and threats of doing this or that.

17 So, I'd like to get from you your understanding of  
18 what the situation is there. Again, as I said in my letter,  
19 I'm not accusing you of doing any of these things, but a lot of  
20 things can happen when you're running the biggest Department in  
21 the state, and you can't be everywhere at all times. And  
22 there's certain permanent people or new people who assume a lot  
23 more power than they should, and they can wreak havoc by the  
24 time somebody reins them in. Havoc is what I've been told is  
25 what's going on.

26 Can you comment on that in the Occupational Health  
27 and Safety part of your responsibilities?

28 DR. COYE: Yeah. You know --



1           SENATOR PETRIS: I could be more specific if you  
2 like. But just give me an overview and --

3           DR. COYE: Let me try and see if it meets your  
4 concerns.

5           As you know, and I mentioned again before, this is  
6 not only an area that I have a lot of background in and care  
7 about, but it's also an area because of that that I feel fairly  
8 competent to judge programmatic work.

9           And when some of these problems came to light and  
10 reorganization was proposed, and in -- as we were also  
11 reorganizing prevention services, in other words, setting up  
12 divisions and branches on that side, I asked specifically in  
13 that area, under all of Environmental and Occupational Health,  
14 to have a full presentation of the work plan, accomplishments,  
15 potential barriers, and you know, anything else the staff felt  
16 was relevant, from all of the units in that area, and also from  
17 the leadership of that area, so I could evaluate the leadership  
18 in terms of the charges that were being made, such as the ones  
19 that you've mentioned.

20           I personally sat through those presentations. I  
21 met with the people leading each of the smaller program areas,  
22 the overall leadership of that area, the leadership of the  
23 Occupational Health section within the Environmental Health  
24 area. I wanted to hear for myself what everybody involved  
25 thought and wanted to accomplish, were currently doing, what  
26 the issues were before that part of the Department.

27           That's an extended involvement that I have not had  
28





1 with most of the areas of the Department. I spent a lot of  
2 time on this.

3 I also spent time on the phone with NIOSH and with  
4 other bodies that would give me some independent national  
5 feedback on how our various staff were doing when they  
6 presented scientific papers, when they attended working  
7 conferences at CDC and NIOSH; what is the perception of the  
8 level of work in the Department, the innovativeness, the  
9 creativity, et cetera. And I know those people well enough to  
10 get a straight answer from them.

11 I am assured both by what I heard and what I've  
12 seen in subsequent work products, and by the discussions with  
13 the national leadership in this area, that while yes, there are  
14 -- there is one particular individual, but several people who  
15 are colleagues of her that are supporting that cause, who are  
16 unhappy with some of the -- what they see as changes to their  
17 personal situations, that in fact, what they are presenting as  
18 a diminution of our policy work, or -- I don't know how to  
19 characterize it, and maybe it's in some of what they've written  
20 to you -- but a misdirection of our work, I believe, is  
21 completely not the case.

22 I took this very seriously. It would be something  
23 that would be very painful to me if, after being here for three  
24 or four years, people said that we had gone downhill in that  
25 area, because my record in New Jersey was one of real  
26 accomplishment and something that I'm very proud of.

27 So, I have a personal stake, in addition to your  
28



1 own commitment and personal stake, and I would be glad to meet  
2 with you, even periodically, and review this with you

3 SENATOR PETRIS: Yeah, I would welcome that.

4 DR. COYE: Because it is something that I'm very  
5 interested in and very concerned about.

6 But I really feel quite confident of the course  
7 that we're on.

8 SENATOR PETRIS: Well, I guess I'm going to have to  
9 meet with you and go into more detail, because the allegations  
10 have to do with some practices of management, management-level  
11 people, looking the other way while new Occupational Health  
12 supervisors have taken actions that have seriously antagonized  
13 key players, not just one, in Occupational Health, such as  
14 Workers' Comp. insurers, through incompetence in implementing  
15 new legislation. The management level is just not being  
16 competent, according to this.

17 DR. COYE: I've reviewed most of that, and I really  
18 do not agree. And I think it at least is debatable, given my  
19 background. If I disagree, it's at least not an open and shut  
20 case that this is a problem.

21 I also think that I have to point out, simply  
22 because this has gone on for some period of time, that the  
23 allegations against this employee are quite serious also, and  
24 that I think that we have to look at some of what is said here  
25 in light of those allegations; that this is both a personnel  
26 issue and, as apparently alleged, it is a personal policy  
27 disagreement.  
28



1           SENATOR PETRIS: Well, can we do that?

2           DR. COYE: Sure.

3           SENATOR PETRIS: Okay.

4           I think that exhausts the subject matters that I  
5 had in mind.

6           Thank you.

7           SENATOR CRAVEN: Let's take a ten-minute recess.

8           [Thereupon a brief recess was taken.]

9           SENATOR CRAVEN: We have now Senator Mello with us.

10          Senator Mello, if you would be so kind to pick up  
11 on those items which you had, and you can explain it to  
12 Dr. Coye, and then she can tell you what answers she has.

13          SENATOR MELLO: Mr. Chairman, am I going to be  
14 limited to my questions? What's the plans of the Chair?

15          SENATOR CRAVEN: Limited in what way?

16          SENATOR MELLO: Well, by the Chair.

17          SENATOR CRAVEN: By time, you mean?

18          SENATOR MELLO: By time or --

19          SENATOR CRAVEN: Well, I'm just going to leave that  
20 up to your good judgment, Henry.

21          SENATOR MELLO: Thank you. Well, I hope to have --  
22 like I say, I'm not going to take a lot of time, but I think  
23 this is an important enough issue. I don't want to be cut off  
24 by the Chair for any reason whatsoever, but I want to be able  
25 to get my questions.

26          SENATOR CRAVEN: Well, I want you to do that,  
27 Henry, but I'm sure you'll do it as succinctly as possible.  
28





1                   SENATOR MELLO: Let me ask the Chair this, if I  
2 may, I don't want to cover ground that Dana Gluckstein has  
3 asked to testify. If we could have her speak, she only wants a  
4 few minutes to go over her point.

5                   SENATOR CRAVEN: Would you prefer that she speak  
6 before you?

7                   SENATOR MELLO: That's my request, and then I think  
8 it would save time, because I will not cover ground that she  
9 might cover in her statement.

10                  SENATOR CRAVEN: All right, fine. Let's do that.  
11 The lady's name is, again?

12                  SENATOR MELLO: Dana Gluckstein. She's with the --  
13 several organizations that she will introduce the organizations  
14 she's representing here.

15                  SENATOR CRAVEN: Fine.

16                  Ms. Gluckstein, you've been here before. I never  
17 forget a face, particularly one like yours.

18                  SENATOR MELLO: An Irish face.

19                  SENATOR CRAVEN: Well, regardless, but the one  
20 thing that I would like, in the most benign admonishment that I  
21 can summon, don't take too long.

22                  MS. GLUCKSTEIN: You have my word. I'm the only  
23 one that's here today, and will be summarizing briefly for all  
24 of the constituencies that I represent across the state.

25                  Thank you very much.

26                  SENATOR CRAVEN: Thank you.

27                  MS. GLUCKSTEIN: I'm Dana Gluckstein, President of  
28



1 Americans for a Safe Future.

2 Thank you, Senators, again for the privilege of  
3 testifying before you.

4 I wear black today as I am in mourning for the  
5 great sadness we have lived through these past days in the war  
6 zone of Los Angeles. As before, I've been asked to represent  
7 thousands of members of the entertainment industry, women's and  
8 environmental groups. There are others who would, under normal  
9 circumstances, be with me today, but are devoting their efforts  
10 around the clock to repairing the soul of Los Angeles.

11 It was just yesterday evening when I received final  
12 word that the procedures DHS laid out for the adjudicatory  
13 hearing purposely erode and violate the substance of what was  
14 agreed to before this very Committee in April. I have waited  
15 hopefully and patiently for the past month, believing naively  
16 that the Rules Committee received a commitment from the DHS to  
17 set procedures that would ensure a fair adjudicatory hearing  
18 process for Ward Valley. Such fair procedures that would  
19 include a trial before a mutually acceptable and neutral judge  
20 without a preordained outcome, as well as assurances that he  
21 central safety issues be resolved in a fashion where the public  
22 would feel confident in the outcome and confident that our  
23 health and welfare would be protected.

24 I assumed that one month certainly was enough time  
25 for DHS, the Legislative Counsel, and the Rules Committee to  
26 resolve interpretation questions from the April 9th  
27 transcripts, iron out unresolved matters, and in particular,  
28





1 the selection of the judge.

2           Unfortunately, this has not been the case. I know  
3 that the Senate Rules Committee has worked with great courage  
4 and integrity to uphold justice. It would be a great insult to  
5 have your hard work turned into a mockery.

6           I'm sorry, this was written very early this  
7 morning, at 4:00 a.m., and I was hoping that Senator Roberti  
8 would be here. I knew he was on a short time line. I will  
9 keep it as I have it, and then hopefully, have just a very  
10 brief, brief discussion about it.

11           Senator Roberti, I understand what a difficult time  
12 this is for you with the recent tragedy in our home town. To  
13 alleviate some of your workload at such a stressful time, and  
14 because we have an additional two weeks to iron out a fair  
15 agreement, I request with your permission that Senator Mello  
16 represent the Senate Rules Committee. He would work closely  
17 with Legislative Counsel, Lisa Brandt of DHS, Nancy Michel and  
18 Dan Hirsch to resolve these outstanding differences in the most  
19 expedient fashion.

20           Please know that the last thing we wanted was to  
21 request that the Rules Committee delay the confirmation of you,  
22 Dr. Coye. Dr. Coye, I know you have earned respect as one of  
23 the finest public health officials in the country. We want to  
24 see you confirmed, and hope and know that that will happen.

25           At the April hearings, Senator Petris eloquently  
26 spoke to you and said that, indeed, you have inherited a  
27 difficult and dangerous legacy with Ward Valley. It is up to  
28



1 you, and you alone, to have the courage to bring to light the  
2 whole truth, because it is in the best interest of the citizens  
3 of California.

4           Unfortunately, I believe that if we do not come to  
5 some conclusion here today as to how we will reach consensus on  
6 the process that will ensure a just hearing, this Committee  
7 will never see that happen. In fact, without your vigilance  
8 and continued leadership, the victory you fought so hard for,  
9 to protect the public health and welfare for future generations  
10 of Californians, will be turned into a trial of the absurd,  
11 where a verdict will be preordained, and the rights of the  
12 citizens haven't a chance.

13           The people I represent here today are also weary of  
14 this battle against our very own government agencies. I want  
15 to believe that we have learned from the vents in Los Angeles  
16 last week. What we should have learned, and what I hope our  
17 Administration has learned, is that you cannot manipulate and  
18 hide the truth without enraging people.

19           We do not want to have to create a major media  
20 blitz around the DHS's indiscretions. We just want an honest  
21 adjudicatory hearing. But if this does not happen, we will  
22 expose the truth as people have a right to know.

23           I thank you, Chairman Roberti and Senators, for  
24 listening to me once again. You have dignified this difficult  
25 process for so many of us.

26           I would like to just refer to a copy of the report  
27 that you have from our key expert, Dan Hirsch, a response that  
28



1 he wrote at noon as he just received the final comments from  
2 Legislative Counsel. It's very important for the record. It  
3 states:

4 "We have three major areas of  
5 concern:

6 "(1) We do not believe it  
7 fully reflects what DHS and  
8 Secretary Gould agreed to at the  
9 April 9 Rules Committee hearing  
10 regarding several significant  
11 matters. These are detailed in this  
12 memorandum.

13 "(2) The letter does not  
14 address at all a number of  
15 outstanding questions regarding the  
16 procedures to be employed ...

17 "(3) Most importantly, despite  
18 a commitment to consult on the  
19 selection of the ALJ for the  
20 hearing, no such consultation has  
21 occurred. Even the precise method  
22 for selecting the ALJ has not been  
23 discussed or resolved. The  
24 selection of a truly neutral trier  
25 of fact, one not 'in DHS's pocket,'  
26 is critical to the agreement reach  
27 on April 9."  
28





1           It is my understanding, having heard Senator  
2 Roberti, that Dr. Coye will be confirmed in this Committee.  
3 Everybody believes that Dr. Coye, you will be the best person  
4 to lead this state.

5           I ask the Senators now, how will we be assured that  
6 the things that were committed to in April will indeed happen?  
7 What is going to guarantee that? I have to go back and tell  
8 this to many, many people, and I don't know what to tell them.

9           Thank you.

10          SENATOR CRAVEN: Very good, thank you very much.

11          Now, Senator Mello.

12          SENATOR MELLO: I'm going to try to answer her  
13 question, and I asked Senator Roberti the question to restate  
14 it here. He said to me that, and he voted -- he requested a  
15 motion being made so Dr. Coye's nomination could be recommended  
16 to the Floor.

17          He said his plan is holding her up for two weeks on  
18 the Floor. That would take it to May the 18th, on a Monday,  
19 would be the final date prior to the May 19th date, during  
20 which time he's going to assign some of his staff people, with  
21 Leg. Counsel, and with the Health Department, to continue to go  
22 over these differences to see whether or not we can bring them  
23 together and come to agreement on a single document that would  
24 be made part of the record and placed in the legislative  
25 Journal. That's the understanding that I have from Senator  
26 Roberti in a conversation with him today.

27          I think he further confirmed that prior to him  
28



1 leaving here today.

2 Hopefully that answers your question.

3 MS. GLUCKSTEIN: Senator Craven, may I ask one  
4 question to you, please?

5 SENATOR CRAVEN: You may.

6 MS. GLUCKSTEIN: Forgive me that I am somewhat  
7 naive in our legislative process.

8 When somebody is held on the Floor, what does that  
9 mean, and what guarantee does that give to us that we will be  
10 able to come to some fair agreement?

11 SENATOR CRAVEN: It has really only one  
12 relationship, and that is the passage of time. To hold some  
13 nomination or nominee on the Floor, perhaps, or a period of two  
14 weeks, which I think Senator Roberti mentioned, just allows  
15 time to take care of those items in which you have greatest  
16 concern.

17 MS. GLUCKSTEIN: So, Senator Craven, in conclusion,  
18 I just ask in good faith on behalf of so many people that I  
19 have here today for the record the guarantee of Dr. Molly Coye  
20 that she will work in her best faith to help all parties come  
21 to terms with this most serious issue.

22 SENATOR CRAVEN: Yes, I'm sure she will be very  
23 happy to say yes to that.

24 DR. COYE: Yes.

25 SENATOR CRAVEN: She says yes.

26 MS. GLUCKSTEIN: Okay.

27 SENATOR CRAVEN: Thank you very much, dear. We  
28





1 appreciate it.

2 MS. GLUCKSTEIN: Thank you.

3 SENATOR MELLO: Mr. Chairman, I'll be, I think,  
4 pretty brief.

5 Mr. Torres has not returned to the room, and  
6 Dr. Coye, he has submitted me with two sets of questions: one  
7 dealing with farmworkers, and the other one dealing with  
8 tobacco use and the health clinics, and so forth.

9 Did he provide you with a list of those questions?

10 SENATOR CRAVEN: Are these Mr. Torres's comments?

11 SENATOR MELLO: Yes, he wrote me the letter. He  
12 asked me at this hearing.

13 Mr. Chairman, I'd like to just ask the Sergeant to  
14 present these questions to Dr. Coye. I'm sure she'd be willing  
15 to respond to him.

16 SENATOR CRAVEN: Very well.

17 As I recall, Mr. Torres's comments the last time,  
18 he at least touched, I think, upon those items to which you  
19 have referred. But if you'll give the Doctor -- do you want to  
20 have a little time to woodshed those?

21 DR. COYE: Do you want an answer here, now?

22 SENATOR MELLO: He was here earlier, but he left.

23 SENATOR CRAVEN: I think he's left, Henry.

24 SENATOR MELLO: I think you having it is adequate.

25 Now, Mr. Chairman, if I may ask the Sergeant again,  
26 the Legislative Counsel's letter that was dated May 6th, do you  
27 have that? It came out this morning.  
28



1 DR. COYE: On Ward Valley?

2 SENATOR MELLO: Yeah, on Ward Valley.

3 DR. COYE: Okay, yes.

4 SENATOR MELLO: The letter from Committee to  
5 Bridge the Gap?

6 DR. COYE: No, I don't have that. You mean the  
7 most recent one from Hirsch? I don't have that.

8 SENATOR MELLO: The other one from Hollywood  
9 Women's Political Committee, a series of letters here that I  
10 want you to have also.

11 What I envision happening in the next -- and here's  
12 a copy of Ms. Gluckstein's statement for your own personal use.

13 What I envision happening in the next two weeks,  
14 then, would be this dialogue to continue.

15 The Bridge the Gap, Mr. Dan Hirsch has gone through  
16 the document that the Department of Health Services is  
17 proposing, comparing that with what they had sent in their  
18 memorandum. They find some deficiencies that they would like  
19 to have resolved prior to the confirmation being confirmed on  
20 the Senate Floor.

21 SENATOR CRAVEN: Let me ask you a question, if I  
22 may.

23 Are you referring to the situation wherein there  
24 was a presumed meeting of the minds prior to the hearing,  
25 finalized hearing, on Mr. Gould, where both sides had come  
26 together to discuss it, and there was, at least in my judgment,  
27 there was an agreement, which seemed to evaporate rather  
28



1 quickly when we had a hearing, because the Ward Valley people,  
2 if you will, came in and made all kinds of comments. One  
3 gentleman, very articulate and obviously very knowledgeable,  
4 kept proffering these various things, and it seemed like the  
5 Committee -- not necessarily Mr. Gould, but the Committee --  
6 was receptive to what he said in many, many instances.

7           Now, that's not to say that everything was resolved  
8 perfectly. But I think all of the witnesses, and the Senators  
9 are very well aware of this, you never necessarily are going to  
10 get everything you want. There has to be some degree of  
11 compromise somewhere along the line. And I suppose half a loaf  
12 is better than no loaf at all.

13           So, keep that in mind.

14           SENATOR MELLO: Mr. Chairman, there's another  
15 really important factor there, and that is, given that the  
16 Department of Health Services has a set of standards there.  
17 The Bridge the Gap people and others have theirs.

18           I'm being guided primarily by our own attorneys.

19           SENATOR CRAVEN: Yes.

20           SENATOR MELLO: Our Legislative Counsel, Eva  
21 Krotinger, who sat through all of these hearings. The letter  
22 that she presented to us is her report to us, the Rules  
23 Committee and the Legislature, and that, I think, is the  
24 dominant factor, and that is what I want to cover briefly  
25 today. And I have about four or five questions in this regard  
26 taken from her own letter, that I'm sure you have a copy of.

27           SENATOR CRAVEN: Fine.  
28





1           SENATOR MELLO: Okay, the first one is, I  
2 understand the process as being underway to develop -- to  
3 appoint and select an administrative law judge.  
4

5           Has that determination been made, or do you have a  
6 short list of possible nominees, and what's the status of that  
7 selection process?

8           DR. COYE: We've been working on it very hard, and  
9 we do intend to -- there's been no final decision, and we do  
10 intend to consult with the Rules Committee before we make a  
11 selection.

12          SENATOR MELLO: Do you have any names of persons  
13 that you would have available for us at this point so we can  
14 check them out in the next two weeks?

15          DR. COYE: No, I don't have them now, but I'll  
16 certainly let you know as soon as we have names. We've been  
17 very aggressively pursuing this, but given our interest in  
18 trying to make sure we have the best possible candidate within  
19 the spirit of the what Leg. Counsel has written up here, in  
20 terms of an independent judge who would be someone that  
21 everybody would have a great deal of faith in it, it's  
22 appropriate, I think, to take the amount of time we need to  
23 come up with a name or names to present to the Rules Committee.

24          SENATOR MELLO: Do you expect that to happen in the  
25 next two weeks?

26          DR. COYE: I certainly hope so.

27          SENATOR MELLO: Okay, well, we'll be looking to see  
28 if you do have.



1 I think it's very important that both sides have a  
2 chance to analyze the person which will be the administrative  
3 law judge on this issue to make sure, as pointed out in here,  
4 they will not a state employee; they will not have a conflict  
5 of interest.

6 DR. COYE: I would like to point out that, again, I  
7 don't want to appear to just stick with legalities, but the  
8 attempt is made not to get a state employee. If we can't find  
9 someone appropriately qualified, willing to do it, who is not a  
10 state employee, I think -- I don't know where it's written in  
11 here, but my recollection is that the attempt would be made to  
12 find someone who's not a state employee. And that certainly is  
13 what we're trying to do.

14 SENATOR MELLO: Plus, the person, I think, should  
15 be able to make an independent judgment based on their own  
16 background, and not having been associated in anyway with  
17 either side, so the procedure, which I think is very important,  
18 would be done very impartially.

19 Is that what you hope to accomplish?

20 DR. COYE: Yes, that's clearly what we would  
21 intend.

22 SENATOR MELLO: Another part of this, Mr. Chairman,  
23 I am not going by any other document than the Legislative  
24 Counsel, so I'm trying --

25 SENATOR CRAVEN: I understand.

26 SENATOR MELLO: The attorneys for the Legislature.

27 The second point being that also to be appointed  
28





1 as administrative law judge will be a scientific advisor to the  
2 ALJ. I think that's an important position.

3 Will that person also -- will you also consult with  
4 us on the appointment of this scientific advisor?

5 DR. COYE: I don't -- I'm not familiar with that.  
6 I know about the science advisor, but I don't know if there was  
7 an agreement about consulting on that.

8 Can you point?

9 SENATOR MELLO: Do you have a copy of the  
10 Legislative Counsel's letter?

11 DR. COYE: Yes.

12 We certainly would be comfortable --

13 SENATOR MELLO: It's on page two, the last --  
14 second-to-the-last sentence:

15 "Simultaneously, an ALJ, and a  
16 scientific advisor to the ALJ, will  
17 be appointed to preside at the  
18 hearing."

19 The point that comes to mind is where the  
20 administrative law judge would be one operating on the  
21 adjudicatory basis, where the scientific advisor would be one  
22 to offer advice, I guess, to the judge based on the scientific  
23 knowledge that they would have of this matter.

24 DR. COYE: Right. We'd certainly be glad to submit  
25 the name to the Rules Committee for consultation.

26 SENATOR MELLO: You will, okay. I think that's  
27 important, because the scientific advisor, having a knowledge  
28



1 of low level radioactive waste, could even be more influencing  
2 on a decision to the judge than the judge having his own  
3 opinion of this matter. So, I think both of them become very  
4 important, from my perspective.

5 I'm happy that you will submit, then, the names  
6 both of the administrative law judge and the scientific  
7 advisor.

8 She nods her head affirmatively, Mr. Chairman. I'm  
9 hoping that our transcriber can place in the notes that the --

10 DR. COYE: I think I stated in a full sentence a  
11 minute ago.

12 SENATOR MELLO: Okay, thank you.

13 Another important thing, we talk about the hearing  
14 to commence at a certain time. There's nothing mentioned about  
15 the location of the hearing.

16 I think this is important, because if it's located  
17 in Ward Valley, or in Modoc County, or somewhere, I would hope  
18 that we could reach agreement that the hearing will be located  
19 in an area accessible to the general public of California.  
20 Namely, comes to mind an area like Los Angeles, or San  
21 Francisco, Sacramento, where you have airport services  
22 convenient so that people can have access.

23 If it's located in a far removed area, this might  
24 serve as a impairment for having people attend these hearings.

25 SENATOR CRAVEN: How about Merced? That's in the  
26 middle of the state.

27 SENATOR MELLO: Merced, yeah, that's what I'm  
28



1 saying.

2 SENATOR CRAVEN: They'd probably be very happy to  
3 have anything down in Merced.

4 [Laughter.]

5 SENATOR MELLO: Well, I heard Stan Statham talking  
6 about his 51st state today, he says nobody wants Bakersfield in  
7 their state.

8 [Laughter.]

9 SENATOR CRAVEN: That's a shame.

10 SENATOR MELLO: Do you see what I'm saying,  
11 Dr. Coye?

12 DR. COYE: Yes, I would certainly in the next  
13 couple of weeks as a part of the discussion be glad to discuss  
14 this. I haven't had any discussion with my staff about it. I  
15 don't know what other considerations might come to bear, but I  
16 assure you, our intent would be to try and assure maximum  
17 public access and participation.

18 SENATOR MELLO: That would include air travel,  
19 hotel accommodations, convenience, so that people can --

20 DR. COYE: Oh, convenience. I thought you meant  
21 paying for it. Yes.

22 SENATOR MELLO: No, no, no, not paying. I mean,  
23 many have come up here to these hearings at their own expense.

24 So, that's going to be your goal, to have it  
25 accessible by putting it in an area --

26 DR. COYE: Yes.

27 SENATOR MELLO: All right. The answer to that was  
28





1 yes.

2           There are some statements here that perhaps my  
3 colleagues, Senators Petris and Beverly, would understand  
4 better than I, and that is whether or not -- well, the  
5 adjudicatory hearing will be held, but then the decision that  
6 you make will include not only the evidence before the  
7 administrative law judge, but also evidence that were in  
8 previous hearings during the Environmental Impact Report and  
9 other hearings that were held.

10           Now the question is, and the reason I ask the  
11 question, I understand that testimony given before the  
12 Environment Impact hearings under CEQA were not under oath. So  
13 therefore, there might be statements made there that would be  
14 of influence to the adjudicatory hearings that were made by  
15 people while not under oath, and while the adjudicatory  
16 hearing, as I understand, will be under oath and be subject to  
17 cross examination.

18           So, I think the credibility of the evidence is what  
19 I'm trying to get to. Under the adjudicatory hearing, it'll be  
20 under a different basis, and have a higher standard of  
21 credibility than those that were just taken before the CEQA.

22           I want to get some response from you, how will you,  
23 as a person faced with this decision, how will you give weight  
24 to the testimony given at all the hearings versus just the  
25 matters of evidence before the adjudicatory hearing?

26           DR. COYE: Well, I certainly will look at the  
27 qualifications of people who speak, the circumstances under  
28



1 which they speak, such as oath or not. Their personal interest  
2 in the matters that are being brought before them, the matters  
3 that they're commenting on, a wide range of issues.

4 I would not be blind to the issues that you're  
5 raising.

6  
7 SENATOR MELLO: Let me ask you this. If there's  
8 testimony in the Environmental Impact Report that appears to be  
9 relevant to the hearing before the administrative law judge,  
10 would you favor bringing these persons back in before the  
11 adjudicatory process, and then put them under oath to make  
12 their statements under oath?

13 DR. COYE: Not necessarily, unless I had reason to  
14 be concerned about their credibility.

15 Certainly, other parties of interest can request  
16 the judge to have them brought forward, but as an a priori  
17 assumption, I would not suggest that everything that was  
18 offered in the EIR would need to be brought back for  
19 repetition.

20 SENATOR MELLO: At this point, all of the testimony  
21 was before all of the hearings that have been held prior to  
22 today, before CEQA and Environmental Impact Reports, and those  
23 are part of the record that you have under consideration?

24 DR. COYE: Uh-huh.

25 SENATOR MELLO: I think it's important to make sure  
26 that your decision finally will bear the weight of the evidence  
27 before the administrative law judge, and are backed up by  
28 credible witnesses that are offering testimony that are, in





1 fact, factual.

2 DR. COYE: I agree. I think it's important.

3 SENATOR MELLO: Another comment made on page four,  
4 now, of the Legislative Counsel's report. They say on Roman  
5 Numeral I, "STATEMENT OF PRINCIPLES FOR AN ADJUDICATORY  
6 HEARING":  
7

8 "There is a commitment to  
9 maintaining the openness of this  
10 process in a way that allows for the  
11 full airing of outstanding  
12 scientific issues."

13 Now, we talked about safety issues as well, and I  
14 think it's important that they not merely be scientific issues,  
15 but they be those issues concerning safety.

16 DR. COYE: Senator Mello, I'd like to suggest on  
17 this, I know that there's a wording somewhere else about how  
18 matters that will be taken up are scientific and safety, or  
19 something like this.

20 This document was crafted carefully by Leg. Counsel  
21 after hearing from both of the sides involved. And I'm not a  
22 lawyer. And the reason why particular phrases were used in  
23 particular areas is something that I don't think that I should  
24 independently try to change or comment on here.

25 I have a great deal of faith in what Leg. Counsel  
26 came out with and will attempt to honor it in spirit as well as  
27 in the technical letter of what is actually written.

28 I would suggest that in the discussions over the



1 next two weeks, that what that means could be clarified by Leg.  
2 Counsel, or Leg. Counsel and our -- and Secretary Gould's  
3 lawyers.

4 But I really don't want to try and amend this or  
5 further explain it.

6 SENATOR MELLO: Well, let me ask you your own  
7 philosophy then.

8 Do you agree that the openness of this process  
9 under the administrative law judge should include the full  
10 airing of scientific and safety issues? Or do you want to  
11 limit it to just scientific issues?

12 DR. COYE: I'm not sure what would be implied in  
13 this highly -- you know, in all of this wording by saying  
14 scientific and safety here. There was a whole discussion that  
15 took place in Secretary Gould's hearings around that, and I am  
16 not certain why Leg. Counsel themselves used this phrasing. I  
17 would prefer to talk to Leg. Counsel and understand their  
18 rationale.

19 MS. MICHEL: Senator Mello, the "Statement of  
20 Principles" is not Leg. Counsel's language. It is the Agency's  
21 language that was incorporated into it just as an addendum, as  
22 I see it, that you initially proposed. The rest of the  
23 document is Leg. Counsel. They incorporated that. This is not  
24 the legal format, the "Statement of Principles".

25 DR. COYE: Okay.

26 SENATOR MELLO: The reason I raised the point, I  
27 think we can have a full hearing on the scientific issues  
28



1 involved, so we can agree on the scientific part of this  
2 proposal, but it may be unsafe.

3 DR. COYE: The thing that's very important here,  
4 because this negotiation was between the Committee and  
5 Secretary Gould, I will be consulting very closely with  
6 Secretary Gould in the actual implementation of the agreement.

7 I'm not prepared independently, here, to alter or  
8 change what we're saying.

9 I will make the personal commitment to you that  
10 what is agreed to between the Rules Committee and Secretary  
11 Gould and the lawyers working for myself and Secretary Gould  
12 over the next two weeks will be what I implement in full faith.

13 But I am not prepared to change the wording which  
14 Secretary Gould has offered to the Committee at this point.

15 SENATOR MELLO: You're saying we're going to be  
16 bound just by Secretary Gould's lawyers and not involved with  
17 lawyers from the Senate?

18 DR. COYE: No, I said between the Committee and the  
19 Agency.

20 SENATOR MELLO: All right. Well, I hope that we  
21 can -- I think safety is more important than scientific aspects  
22 of this whole hearing, because whatever scientific knowledge  
23 might be available is one thing, but if we leave out safety,  
24 we're leaving out probably the biggest challenge that -- or it  
25 may not be a vital issue.

26 Okay, another issue on that same page. As  
27 Ms. Michel points out, these are "Statement of Principles" from  
28





1 your Department that, I think, are very limited.

2 Roman Numeral III:

3 "The process must be based on, and  
4 consistent with, existing state law  
5 and not create new legal issues that  
6 will only give rise to subsequent  
7 challenges."

8 I think we're leaving out an important part there,  
9 because most of the laws relating to nuclear energy, both high  
10 and low level, are under federal law and the Nuclear Regulatory  
11 Commission, the NRC.

12 So, I think what you're trying to do here is limit  
13 the scope to only state law, which is pretty much is limited by  
14 CEQA, rather than meet the standard that governs us all on the  
15 federal basis and the Nuclear Regulatory Commission.

16 DR. COYE: Yes. Again, I would say that this was a  
17 Statement of Principles offered by Secretary Gould in response  
18 to negotiations that he conducted with the Committee.

19 I'm not in a position to alter or change what has  
20 been submitted to the Committee. I certainly will convey your  
21 concerns back to Secretary Gould, and during this next two  
22 weeks, there'll be an opportunity to work it out, apparently.

23 But my sense is that there was, you know, a great  
24 deal of thought and effort that went into this on the part of  
25 both our staff, myself, and the Secretary. And I would prefer  
26 to wait rather than offering any amendments at this point.

27 SENATOR MELLO: Yeah, I understand your position.  
28



1 You're not saying that you can speak on behalf of the  
2 Secretary.

3 I just want to convey to you, people I've been  
4 talking with feel this is very important, that the laws  
5 governing the state and federal government and the Nuclear  
6 Regulatory Commission be the laws by which the process be based  
7 on, and not be limited just to state law, which I think would  
8 just about negate any issues governed under federal law.

9 SENATOR CRAVEN: May I just interject, Senator  
10 Mello?

11 Correct on this if I'm wrong, isn't it fair to  
12 assume that we adopt by reference federal law as it pertains to  
13 the subject matter, and that we still have certain latitude  
14 within state law, and our own operation, to exceed from the  
15 standpoint of stringent quality that which the feds may have  
16 enacted?

17 SENATOR MELLO: That says something to me more  
18 satisfying than what's here, because here it makes no reference  
19 to the federal law that really pre-empts state law in most  
20 cases.

21 DR. COYE: I really, since this was negotiated by  
22 Secretary Gould and the Committee, I'd be much more comfortable  
23 going back and consulting with him.

24 SENATOR CRAVEN: I understand that, Doctor.  
25 Senator Mello does, too.

26 SENATOR MELLO: I'm raising the issue because in  
27 the next two weeks, Senator Roberti's indicated he's going to  
28





1 designate some of his staff. I hope to be involved to the  
2 extend I can and others, so that finally, I hope that we have  
3 an agreement that everybody's happy with, or unhappy slightly  
4 with, but something that we can move forward in a very credible  
5 way, getting all the information before us.

6 Now, the final one, Mr. Chairman, and I know you're  
7 going to start applauding, but hold your applause until I get  
8 through.

9 This is the timing. Roman Numeral IV says:

10 "In the interest of assuring that  
11 any final decision reflects all  
12 available information, there will be  
13 no licensing decision until the  
14 completion of the adjudicatory  
15 hearing process."

16 That's fine. The thing that comes to mind is,  
17 there should be somewhere, I think, what an adjudicatory  
18 hearing -- it's not clear in my mind whether -- I know you make  
19 the decision, so I guess the adjudicatory is closed. The case  
20 is terminated at that point. Information is brought to you.

21 I think that there should be a period of time,  
22 maybe 30 days, by which people may want to appeal. Your  
23 decision not be made firm in place until the 30-day period.

24 I don't know what the existing law would call for,  
25 because -- and I don't know even there might be an appeal even  
26 after you made your final decision.

27 I'm just searching to see whether or not there is a  
28



1 period of time which you can announce your decision to be  
2 effective. Like, if you made it today, maybe it would be  
3 effective June the 6th. That's how referendums are made at the  
4 county level. They're effective in 30 days. During that  
5 30-day period, you have an ability to file a protest or file an  
6 appeal action, or something, at that point.

7  
8 DR. COYE: Again, I think this is in the same  
9 category as the other items.

10 I understand your concern, and I will certainly  
11 both consider it myself and refer it back to Secretary -- take  
12 it back to Secretary Gould, but it would be a substantive  
13 addition to the text of what Secretary Gould has prepared and  
14 what Leg. Counsel has prepared. Therefore, it is different.

15 I think this is in the technical body of what Leg.  
16 Counsel represents is the agreement between the Rules Committee  
17 and Secretary Gould. So therefore, I would be very reluctant  
18 to offer any changes in that, but I would suggest it could be  
19 addressed in the next two weeks.

20 SENATOR MELLO: Well, I appreciate your statement  
21 here.

22 You're testifying that there appears to be  
23 agreement in the text from your Department and from the Bridge  
24 the Gap and others.

25 DR. COYE: No, I'm sorry. I meant -- excuse me. I  
26 meant agreement between the Secretary Gould and our staff in  
27 the Agency, and the Senate Rules Committee, and Leg. Counsel.  
28 I'm not sure, you know, on which issues we will come to



1 agreement with the Committee to Bridge the Gap.

2           SENATOR MELLO: I think the way that, at least my  
3 understanding, that we're proceeding on is, we've had several  
4 transcripts of all the hearings, and statements that you made  
5 and Mr. Gould have made are all part of the transcripts.

6           Leg. Counsel has then gone through them, trying to  
7 pick out the testimony from Bridge the Gap and other groups,  
8 trying to bring those into context so that this agreement,  
9 then, can be finalized.

10           At this point, based on Leg. Counsel, let me ask  
11 Nancy Michel, if I may, the position of Leg. Counsel that was  
12 indicated to me yesterday is that the last memorandum of  
13 agreement that your Department has put forth does not meet the  
14 parameters of the agreement that was testified to here before  
15 the Committee, and Eva Krotinger indicated she needed more time  
16 to bring this together.

17           MS. MICHEL: I think at this point what we have  
18 from Leg. Counsel is their belief of what the agreement was.

19           DR. COYE: And we've accepted that.

20           SENATOR MELLO: But have they indicated that it  
21 does meet what was agreed to?

22           MS. MICHEL: That is my understanding of their  
23 representation.

24           They acknowledge that there are open issues, but  
25 those were not issues that were part of the Rules Committee  
26 hearing.

27           SENATOR MELLO: Okay.  
28





1                   Well, Mr. Chairman, thank you. I tried to be brief  
2 enough, but I did want to get these out, and I do hope that in  
3 the next two weeks, we can work towards bringing these issues  
4 together.

5                   I think it's a very important issue, and I just  
6 think that the use of nuclear energy and the disposal of waste,  
7 whether it be low level or high level, and the accumulation  
8 thereof, has such a threat to the planet and society, we have  
9 to take every precaution that we don't endanger safety. That's  
10 why I brought up that point about safety, and that we protect  
11 the planet Earth as well as the people's health, and not  
12 endanger the resources that we have here.

13                  And I see that nuclear energy is one of the  
14 greatest threats we have if we don't manage it under very  
15 extreme, cautious conditions. That's why I think this issue  
16 becomes very important.

17                  SENATOR CRAVEN: Very good. Thank you, Henry, for  
18 adhering to that which you told us you were going to pursue,  
19 and you did it as succinctly as possible.

20                  I think all of the Members of the Committee, as  
21 well as those persons in the audience who have a great interest  
22 in this issue, are very appreciative of the introspective  
23 manner in which you've handled yourself in your questions  
24 during this period of time, which is at time trying, but I  
25 think I'm beginning to see the light at the end of the tunnel.

26                  Senator Petris, do you have anything further?

27                  SENATOR PETRIS: On this issue, no.  
28



1 SENATOR CRAVEN: That's good.

2 Senator Beverly.

3 SENATOR BEVERLY: Just one comment.

4 This may go on forever, but one thing we're  
5 overlooking. The witness and the nominee took an oath of  
6 office to uphold the laws of the State of California, and the  
7 Constitution, and the U.S. laws as well.

8 SENATOR CRAVEN: Yes.

9 SENATOR BEVERLY: She's a woman of integrity and  
10 good judgment, and I think we can presume she'll act  
11 accordingly.

12 Move we lift the call and call the roll.

13 SENATOR PETRIS: Before you call the roll, I'm  
14 going to abstain until we see what develops in the next two  
15 weeks. I'm going to forego any vote until we get to the Floor.

16 And we're going to have a meeting in the meantime.

17 SENATOR CRAVEN: Very good.

18 There being no further questions, call the roll,  
19 please.

20 SECRETARY WEBB: Senator Beverly.

21 SENATOR BEVERLY: Aye.

22 SECRETARY WEBB: Beverly Aye.

23 Senator Mello. Senator Petris. Senator Craven.

24 SENATOR CRAVEN: Aye.

25 SECRETARY WEBB: Craven Aye.

26 And Senator Roberti had already voted Aye, so the  
27 vote is three to zero.  
28





1           SENATOR CRAVEN: Three-zero; the nomination is  
2 moved to the Floor.

3           You didn't even have a chance to say anything; did  
4 you?

5           DR. COYE: That's all right. Thank you.

6           SENATOR CRAVEN: You might say Amen.

7           You're welcome, Molly. Thank you very much.

8           Thank you, all of those of you who came to the  
9 hearing, not only this but the others. We appreciate your  
10 intense interest and the testimony which you have delivered.

11           All right, let's go next to appointees, Octavia  
12 Diener, Member, California Transportation Commission.

13           MS. MICHEL: I think Senator Kopp wanted to be  
14 here.

15           SENATOR CRAVEN: Did I pronounce your name  
16 correctly?

17           MS. DIENER: You're pretty close: Deener.

18           SENATOR CRAVEN: I was going to say that, then I  
19 thought, well, i-e-, I don't know.

20           Ms. Diener, we ask all of the nominees to tell us  
21 why they feel that they are competent for that positions to  
22 which they have been nominated.

23           MS. DIENER: Thank you.

24           I served on the Fresno City Planning Commission for  
25 several years and chaired that Commission for two years. I  
26 also have been very involved with the Economic Development  
27 Corporation and chaired that board for two years, and also with  
28



1 our local Chamber of Commerce and worked with their  
2 Transportation Department.

3 So basically, my interest in transportation has  
4 stemmed probably more from land use planning, and I have seen  
5 transportation from the land use planning area.

6 SENATOR CRAVEN: Yes.

7 Do either of the Senators have any question of the  
8 nominee? Senator Beverly has none.

9 Senator Petris, do you?

10 SENATOR PETRIS: Yes.

11 I'm only going to go into one area, and that is the  
12 Amtrak new train from San Jose all the way up to here and back.

13 I've had complaints from people riding that train  
14 that since the policy was changed -- they apparently removed  
15 one car, which was a smoking car -- so now they allow smoking  
16 in the other cars in the first five rows, and that doesn't  
17 work. It seems to me that's in violation of our statute which  
18 says you can't do that.

19 Are you aware of that problem?

20 MS. DIENER: No, I'm not. I would have to take  
21 that back to our full Commission.

22 SENATOR PETRIS: I wish you would. I think it's  
23 very important. A lot of riders have been discouraged by the  
24 increase in the fare. The original reaction has been  
25 fantastic, thousands of riders. But I understand that's been  
26 very substantially cut back since the amount was changed, so we  
27 don't want to discourage any more than we have to.  
28



1 MS. DIENER: I think we're having a rail  
2 renaissance.

3 SENATOR PETRIS: Yeah, well, I hope so. It  
4 certainly looked like one when it first started.

5 Anyway, I would appreciate it if you'd take that  
6 back to the Commission and serve notice on the people who are  
7 running that trains that maybe they need more signs. I don't  
8 know if they have any signs, actually.

9 MS. DIENER: I have taken Amtrak before, but I'm a  
10 nonsmoker.

11 SENATOR PETRIS: Well, they wouldn't have signs if  
12 they allow smoking in the first five rows. And we found out in  
13 the past it doesn't work, any more than it did in the airplane.  
14 The smoke always seemed to blow in the direction of the  
15 nonsmokers, no matter which way the airplane was going.

16 [Laughter.]

17 SENATOR PETRIS: And even now on the trains, when  
18 they can't open the windows, it still seems to be a problem.

19 MS. DIENER: Senator Petris, I'd be happy to take  
20 your comments to the full Commission.

21 SENATOR PETRIS: Do you have any information on the  
22 fare? What's the current ridership compared to the early  
23 weeks?

24 MS. DIENER: I know it's been very good, but I  
25 don't think we've had -- we've not had an update currently, but  
26 it has been very good.

27 SENATOR PETRIS: Maybe the Director would know.  
28





1 I'll have to ask him.

2 But I was overjoyed with the results that I heard  
3 originally. I know some people who come up from the Bay Area  
4 on Sundays, and go into Old Town, and maybe even go to the  
5 Railroad Museum, you know, families, and then they go back.  
6 So, there's been a tremendous success so far.

7 MS. DIENER: Now we need to complete the links.

8 SENATOR PETRIS: Pardon me?

9 MS. DIENER: We need to complete some of the links  
10 also.

11 SENATOR PETRIS: Right. Thank you.

12 SENATOR CRAVEN: Is there anyone in the audience  
13 who wishes to testify on behalf of the nominee? Anyone in  
14 opposition? There appears to be none.

15 SENATOR BEVERLY: Move we recommend approval of the  
16 confirmation.

17 CHAIRMAN ROBERTI: Senator Beverly moves.

18 Call the roll, please.

19 SECRETARY WEBB: Senator Beverly.

20 SENATOR BEVERLY: Aye.

21 SECRETARY WEBB: Beverly Aye.

22 Senator Mello. Senator Petris.

23 SENATOR PETRIS: Aye.

24 SECRETARY WEBB: Petris Aye.

25 Senator Craven.

26 SENATOR CRAVEN: Aye.

27 SECRETARY WEBB: Craven Aye.  
28



1 Senator Roberti.

2 SENATOR CRAVEN: The measure is out three-zero.  
3 Congratulations.

4 SECRETARY WEBB: Senator Mello had asked to hold  
5 the roll open.

6 SENATOR CRAVEN: That's right, I'm sorry. We'll  
7 leave it open and you'll get another vote.

8 MS. DIENER: Thank you.

9 SENATOR CRAVEN: You're entirely welcome.

10 [Thereupon the Rules Committee  
11 acted upon legislative items  
12 on the agenda.]

13 SENATOR CRAVEN: Let's go back to the nominees,  
14 Louis W. Barnett, Member of the Unemployment Insurance Appeals  
15 Board.

16 Mr. Barnett, if you would, tell us why you feel  
17 you're qualified.

18 MR. BARNETT: Senator, first if I might say, it's a  
19 pleasure to see several old acquaintances, yourself and Senator  
20 Beverly, and have the opportunity to make a new acquaintance in  
21 Senator Petris.

22 There's several reasons why I would feel qualified  
23 for the position. The first reason is the extent and breadth  
24 of my past government service, including local, state and  
25 federal government.

26 The second reason would my interest in and  
27 involvement with various public policy issues over the years.  
28





1 Thirdly would be the fact that I have served, I  
2 believe, effectively on the Board for the past 11 months,  
3 filling an expired term.

4 The fourth reason would be that the Chairman of the  
5 Board has appointed me as Vice Chairman, I believe in  
6 recognition of my understanding of the Board's operations and  
7 my leadership on the Board.

8 The fifth reason would be after 11 months of  
9 service on the Board, the Governor has seen fit to reappoint  
10 me.

11 Thank you.

12 SENATOR CRAVEN: Very well, thank you very much.

13 Senator Petris.

14 SENATOR PETRIS: As Vice Chairman of that  
15 committee, are you going to be able to hire more judges?

16 MR. BARNETT: We are consistently hiring more  
17 judges. Yesterday's Board meeting, we extended offers, I  
18 believe, to four additional individuals to be hired as  
19 administrative law judges. We have previously interviewed  
20 these people, found them competent. They have tested and  
21 expressed an interest. We will are hopeful that they will  
22 accept the offer.

23 Within the last year, we have hired over a hundred  
24 administrative law judges at the Agency, most of which are on a  
25 temporary basis.

26 SENATOR PETRIS: Why are they temporary? For the  
27 catching up?  
28



1 MR. BARNETT: To catch up with the backlog that we  
2 have, and also as temporary hiring authority that we asked for,  
3 we do anticipate the recession will end at some point, and we  
4 hope that the caseload will go down.

5 SENATOR PETRIS: How many vacancies are there, or  
6 much short of the goal are you?

7 I understand, wasn't there litigation on this  
8 point, and there was an agreement that a certain number would  
9 be hired by a certain date? But I don't remember those  
10 numbers.

11 MR. BARNETT: Well, I think the reason you don't  
12 remember the numbers, Senator, it did not get to the point of  
13 litigation. There has been extensive discussion between  
14 Chairman Harvey, and representing the Board at our side, and  
15 through our Chief Counsel, Mr. McArdle, who is here today, and  
16 CRLA, and some of the other firms that have indicated an  
17 interest in pursuing this.

18 We have been in constant contact and we have been,  
19 I think you can appreciate, shooting at a moving target in  
20 terms of the backlog. Our projections are based upon the  
21 projections of the Employment Development Department, and a  
22 certain percentage of those will come up on appeals. As they  
23 have -- their projections have been exceeded by the actual  
24 caseload, our caseload has been higher, we have constantly been  
25 increasing our target for the number of judges to be hired.

26 We are probably internally now looking at a higher  
27 number than we have indicated previously to CRLA will be  
28



1 needed. We've received certain indications of authority and  
2 flexibility from the Department of Personnel Administration and  
3 other state agencies just within the last couple of weeks,  
4 where we will be able to bring -- make greater use of the  
5 existing inventory of judges we have, as well as bring on  
6 people from other departments.

7 We still have in our mind now a target of  
8 additional judges to be hired. We have within our mind a  
9 target of making offers within the next month and bringing them  
10 on the following month, having them trained in the month of  
11 June, and having them start effective July 1st.

12 But that actual target, Senator, will depend upon a  
13 number of the other offers -- will depend upon the number of  
14 other offers of help that have been made. DPA allows us some  
15 flexibility on compensating time off. Depending upon how  
16 effective a tool that is in getting our existing judges to  
17 carry a greater caseload, we'll need fewer additional hires.

18 We've had indications from the Governor's Office  
19 that we can expect some loan personnel, maybe, from other  
20 agencies. To the extent that we have loaned state personnel,  
21 that will reduce our need to hire additional judges.

22 I'm trying to be specific, Senator, in responding  
23 to your question, and be as factual as I can, and not obfuscate  
24 the obvious.

25 SENATOR PETRIS: What is their salary?

26 MR. BARNETT: The --

27 SENATOR PETRIS: Starting salary?  
28





1 MR. BARNETT: The starting salary would be 79,000.

2 SENATOR PETRIS: Are you have trouble recruiting  
3 people?

4 MR. BARNETT: The -- we are having some problems  
5 hiring people. I think the largest impediment we have,  
6 Senator, would be that we're offering jobs on a temporary  
7 basis.

8 SENATOR PETRIS: Have the new hundred judges so far  
9 been able to reduce the backlog?

10 MR. BARNETT: I think the right answer there,  
11 Senator, is, they've been able to reduce the old backlog, but  
12 they haven't been able to reduce the new backlog.

13 SENATOR PETRIS: You have a new one and an old one?

14 MR. BARNETT: Well, the number of registrations of  
15 appeals we get every month has continued to climb. The  
16 Employment Development Department estimated that there would be  
17 a decrease, or a leveling off, at least, of appeals this year.  
18 In the first two months, I think we exceeded their estimate for  
19 the quarter.

20 Last month was higher than the month before. We  
21 continually see an increase.

22 Internally, we are now projecting our future  
23 caseload basically on the basis of an annualized figure of the  
24 worst month we've had yet.

25 SENATOR PETRIS: Are most of the appeals by  
26 employees whose claims have been rejected or denied?

27 MR. BARNETT: Mostly by claimants, yes.  
28



1           SENATOR PETRIS: Have you had any estimate -- I  
2 realize these judges we're talking about are not at your level.  
3 You're on the appellate level, so it's the trial level which  
4 we're concerned about. That's where the jam is.

5           MR. BARNETT: Right. That's principally correct.  
6 We do have some Board authors that worked at the appellate  
7 level, and we've been hiring at that level. And we anticipate  
8 and project that we will be hiring additional administrative  
9 law judges at the Board level as well.

10          SENATOR PETRIS: Do you also need other personnel,  
11 clerks --

12          MR. BARNETT: Yes.

13          SENATOR PETRIS: -- to process the petitions and so  
14 forth?

15          MR. BARNETT: Yes, we do, and we have been hiring a  
16 -- in excess of on a one-to-one basis.

17          SENATOR PETRIS: Every judge has at least one  
18 clerk; correct?

19          MR. BARNETT: Not -- that is the effect, but it's  
20 on a pool basis really.

21               I should note that in addition to simply increasing  
22 the number of administrative law judges, we're attempting to  
23 introduce efficiencies. We have new computer systems that are  
24 being implemented in the offices right now. We have requests  
25 out for some lap tops, and we're looking for productivity  
26 tools so that we can get more work out of the existing judges,  
27 again, increase their effectiveness, and not just throw more  
28





1 people at it.

2 And Senator, speaking on behalf of the Chairman,  
3 Mr. Harvey, and myself, either one of us or both of us would be  
4 very happy to come over and give either you or your staff an  
5 in-depth briefing on any of these issues that remain.

6 SENATOR PETRIS: Thank you.

7 They usually express the backlog in terms of shelf  
8 feet. Do you know what it is now in the average office?

9 MR. BARNETT: I would -- I would have trouble --  
10 there is no average office. We have some offices that are  
11 experiencing a very short backlog, and then we have areas like  
12 Van Nuys and inland that are just staggering.

13 SENATOR PETRIS: Van Nuys has had a problem for  
14 long, long time.

15 MR. BARNETT: Yes, sir.

16 SENATOR PETRIS: Why is that such a problem? They  
17 have fewer judges there?

18 MR. BARNETT: No. The inventory continues to  
19 increase as claims are registered, which are in excess of what  
20 we had estimated. We've had problems at Van Nuys with physical  
21 space.

22 I think you can appreciate that while the state has  
23 certain requirements of square feet that you permit a state  
24 employee to have, there are also actual physical limitations on  
25 the number of administrative law judges and their support staff  
26 that you can pour into that amount of square feet.

27 Van Nuys has had to institute a work-at-home  
28



1 program, where clerical support staff has been doing work at  
2 home and bringing it to the office because we haven't had the  
3 space in the office for them. We have attempted to physically  
4 modify the office so that we could accommodate more people  
5 there. It is on state building, in a state building, and  
6 there's no additional space available in that building.

7 We've attempted to address the hearing room problem  
8 by holding hearings off site, and using the space that was  
9 there principally for the administrative law judges and support  
10 staff.

11 SENATOR CRAVEN: I think you may remember also, one  
12 of the problem was, they didn't have a clock.

13 SENATOR PETRIS: Yes, that was one of the problems.

14 Do you have a clock now?

15 SENATOR CRAVEN: He probably doesn't know what  
16 we're talking about.

17 We went through this thing, and they were talking  
18 about, you know, we have 97 feet of unopened mail, and so  
19 forth. And then one of the people got up; he was one of the  
20 people in the program, a judge or whatever, and he said one of  
21 the problems was, they didn't have a clock. And we go, well,  
22 that's very, very interesting. Maybe they figured out a way to  
23 use that clock to measure the footage of those things, so this  
24 fellow here would then know how many feet you've got on the  
25 ground, or too many.

26 It's a horrendous problem. This Committee's very  
27 aware of it. We've had some rather exhaustive hearings along  
28



1 that line, and I, for one, am very impressed with your  
2 responses.

3 SENATOR PETRIS: I have two more.

4 What is the principal reason for denial of the  
5 original petition as it comes up to you? Is there any one  
6 category?

7 MR. BARNETT: Denial of the petition, if you could  
8 be a little more specific. The principal reason why somebody  
9 would appeal?

10 SENATOR PETRIS: Yes.

11 MR. BARNETT: I think the major reason would be the  
12 denial of benefits by the lower authority hearing judge. That  
13 is, a --

14 SENATOR PETRIS: Based on what, ineligibility?

15 MR. BARNETT: The principal reason for denial would  
16 be probably misconduct. That is, they did something that was  
17 considered misconduct, not in the lay sense, but they did  
18 something that would constitute misconduct under the  
19 unemployment code.

20 SENATOR PETRIS: At least that's the most common  
21 base of appeal?

22 MR. BARNETT: I would say, yes, but not necessarily  
23 the majority of cases, but the most common of all the cases.

24 SENATOR PETRIS: Do you know how long it takes now  
25 for a claim to be processed from the time it's filed until  
26 conclusion?

27 MR. BARNETT: I think that we have seen some claims  
28





1 on federal extended benefits that have been filed, a  
2 determination made by the Employment Development Department,  
3 hearing in the field, and they have been up to us already  
4 within, I would think, three months. Would that be correct?

5 Yes.

6 On the other hand, at the outside, we would have,  
7 frankly, tax cases that have probably been sitting around  
8 longer than you might like me to go on record about.

9 SENATOR PETRIS: Well, that's what I want to know.

10 MR. BARNETT: About, maybe, two years; probably two  
11 years. The tax cases --

12 SENATOR PETRIS: Now, the tax cases are appealed by  
13 the employer, probably.

14 MR. BARNETT: Yes, those would be by the employer.

15 SENATOR PETRIS: On the longer cases involved the  
16 employee, what happens to the employee during this appeal time?  
17 There's no other source of income, is there?

18 MR. BARNETT: Well, that would depend upon the  
19 individual. By the time they get up to us, and on behalf of  
20 the Board, our position is it's taking far too long for a final  
21 resolution. But by the time we see them, they may well have a  
22 job; they may be involved in self employment. They may have  
23 been accepted for Workmen's Comp., state disability, or  
24 something other than unemployment.

25 SENATOR PETRIS: Are any of them on welfare?

26 MR. BARNETT: Oh, yes, I'm certain that there are a  
27 number.  
28



1           SENATOR PETRIS: Do you know what percentage?

2           MR. BARNETT: No, Senator, and I would not even  
3 venture a guess. That's not a question we ask of them in the  
4 hearing. We do ask things like have they been able to obtain  
5 employment yet, and we get a sense of those issues.

6           SENATOR PETRIS: Well, I'm asking it as a budget  
7 question from this end. There are some, but you don't know how  
8 expensive it is.

9           MR. BARNETT: No, I would not want to venture a  
10 guess. I would have no basis to give you a good guess on that  
11 one.

12           I would note in passing, though, that we have found  
13 that the insured unemployment rate -- that is, those cases that  
14 involve paying out of the fund -- that rate is higher, even  
15 though state employment has gone up, or state unemployment has  
16 gone down. That is probably so because of the extended  
17 benefits program, and people who would have rolled off the  
18 program have been able to stay on the program.

19           And secondly, we have noted that the length of the  
20 claims seems to be longer, again reflecting just the general  
21 newspaper articles that there's a problem out there that a lot  
22 of people are unemployed and being -- and are having trouble  
23 finding jobs.

24           SENATOR PETRIS: Apart from this long delay, I  
25 don't think any of us likes this long delay, do you think it's  
26 basically a fair system? And if not, do you have any  
27 recommendations to us, things that we should do as a  
28





1       Legislature to improve it?

2               MR. BARNETT: First, Senator, I would indicate that  
3 my position is s fairly administrative and judicial position  
4 and not a public policy position.

5               Secondly, I would indicate that I haven't thought  
6 about that, but I'm a relatively opinionated person, and if I  
7 spent any time at it, I'd probably have some suggestions.

8               The third thing that I would say very specifically  
9 right now is that inasmuch as our caseload goes up and down  
10 radically with the turns in the economy that cannot be dictated  
11 by the State Legislature, and this is probably going to get me  
12 in Dutch with somebody, we probably need greater flexibility  
13 built into the law with regard to hiring, renting facilities,  
14 and things of that nature, so that when we do get hit with a  
15 big shock on unemployment going up, or conversely, when the  
16 numbers come down, there's the potential of a wind sheer  
17 factor, where our funds come in on the basis of the caseload.  
18 If that goes down, and we're still hiring and renting office  
19 space, we could get hurt real bad.

20               SENATOR PETRIS: So you need more flexibility.

21               MR. BARNETT: That would be the thing I would give  
22 you, give you off the top of my head right now.

23               SENATOR PETRIS: Do you think that could be done  
24 with a change in the law?

25               MR. BARNETT: Absolutely.

26               SENATOR PETRIS: It can't be done without a change?

27               MR. BARNETT: It can, Senator, but pots have to  
28



1 boil over before everybody realizes that that's the one that's  
2 boiling over.

3 SENATOR PETRIS: Okay, well, thank you.

4 MR. BARNETT: Thank you, Senator.

5 SENATOR CRAVEN: Very well.

6 Anyone wish to testify on behalf of the candidate  
7 or in opposition? There appears to be none.

8 Senator Beverly.

9 SENATOR BEVERLY: Move recommendation to the Floor.

10 SENATOR CRAVEN: Senator Beverly moves.

11 Call the roll, please.

12 SECRETARY WEBB: Senator Beverly.

13 SENATOR BEVERLY: Aye.

14 SECRETARY WEBB: Beverly Aye.

15 Senator Mello.

16 SENATOR MELLO: Aye.

17 SECRETARY WEBB: Mello Aye.

18 Senator Petris.

19 SENATOR PETRIS: Aye.

20 SECRETARY WEBB: Petris Aye.

21 Senator Craven.

22 SENATOR CRAVEN: Aye.

23 SECRETARY WEBB: Craven Aye.

24 Senator Roberti.

25 Four to zero.

26 SENATOR CRAVEN: Measure's out four to zero and to  
27 the Floor.  
28



1 MR. BARNETT: Thank you, Mr. Chairman.

2 SENATOR CRAVEN: Thank you very much.

3 Next we have Benjamin J. Hacker, Director of  
4 Veterans Affairs.

5 First we'll take a brief recess.

6 [Thereupon a brief recess was taken.]

7 SENATOR CRAVEN: We have here as a nominee Admiral  
8 Benjamin J. Hacker, Director of Veterans Affairs.

9 Admiral Hacker, we'll ask you what we ask the other  
10 nominees, and that is why you feel that you're qualified for  
11 this position.

12 ADMIRAL HACKER: Yes, sir, Senator.

13 I would respond by saying that I've had 30 years of  
14 Naval service, preceded by about five years' experience in the  
15 Army and National Guard.

16 In the course of my Naval tenure, I've had the  
17 opportunity to command the Naval Air Station in Brunswick,  
18 Maine; the Maritime Air and Surveillance Forces in the  
19 Mediterranean; Commander of the Naval Training Center at San  
20 Diego and the Naval Base in San Diego have all been a part of  
21 my experience.

22 I would conclude my comment that -- by saying that  
23 the background and experience, I think, has prepared me to  
24 serve effectively as an advocate on behalf of veterans of  
25 California.

26 SENATOR CRAVEN: Very well.

27 Do any of the Senators have any questions of  
28





1 Admiral Hacker?

2 SENATOR BEVERLY: How do you feel about the Marine  
3 Corps, Admiral?  
4

5 [Laughter]

6 ADMIRAL HACKER: I'm a strong Marine Corps  
7 supporter, Senator Beverly.  
8

9 SENATOR CRAVEN: As a matter of fact, he just came  
10 over and spoke to me about the Legislative Marine Brigade.

11 Is there anyone in the audience who wishes to speak  
12 in favor or in opposition to this appointee?

13 Yes, ma'am, did you wish to speak? Come to the  
14 table and state your name, please.

15 MS. MANWILLER: I'm Pam Manwiller, and I represent  
16 State Employed Physicians, Dentists and Podiatrists.

17 We want to speak in favor of the Admiral. We've  
18 gone to him with some concerns from the Veterans Home, and he  
19 has been very accessible to us. He's listened to us.

20 I'd like to tell you, we've gotten every concern  
21 dealt with. That's not always the reality, but he certainly  
22 has provided an open door, and is working with the staff to  
23 meet their needs.

24 SENATOR CRAVEN: Very well, thank you very much.

25 Anyone else?

26 SENATOR PETRIS: May I ask a question?

27 SENATOR CRAVEN: Senator Petris.

28 SENATOR CRAVEN: What's the name of your group?



1 MS. MANWILLER: The Union of American Physicians  
2 and Dentists.

3 SENATOR PETRIS: Now I understand from your group  
4 that at one time, there was a communication problem. Has that  
5 been resolved?

6 MS. MANWILLER: There has been, and it has been  
7 resolved. And I feel like that's why we're here in support of  
8 the Admiral. He has provided accessibility, and there's always  
9 ongoing issues, but I think that he's given us a lot of access  
10 to his office.

11 SENATOR PETRIS: Okay, that's fine.

12 Thank you.

13 SENATOR CRAVEN: Good to hear.

14 Senator Beverly.

15 SENATOR BEVERLY: Move approval of the nomination.

16 SENATOR CRAVEN: Senator Beverly moves.

17 Call the roll, please.

18 SECRETARY WEBB: Senator Beverly.

19 SENATOR BEVERLY: Aye.

20 SECRETARY WEBB: Beverly Aye.

21 Senator Mello.

22 SENATOR MELLO: Aye.

23 SECRETARY WEBB: Mello Aye.

24 Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Petris Aye.

27 Senator Craven.  
28





1           SENATOR CRAVEN: Aye.

2           SECRETARY WEBB: Craven Aye.

3           Senator Roberti.

4           Four to zero.

5           SENATOR CRAVEN: The measure is to the Floor.

6           We thank you, Admiral, for being with us. We're  
7 sorry that you didn't have more time to tell us some of your  
8 exploits, or whatever, but I'm sure you're just as happy.

9           ADMIRAL HACKER: Thank you.

10          SENATOR CRAVEN: As they say, it's good to have you  
11 aboard.

12          Next is Kyong Hwan P. Kim, Member, State Board of  
13 Education.

14          Mr. Kim, please sit down.

15          MR. KIM: Thank you very much, Mr. Chairman.

16          SENATOR CRAVEN: Tell us why you feel you're  
17 qualified, please.

18          MR. KIM: Well, I first go by the name Paul. It's  
19 easier for you.

20          Qualified, I guess. It's kind of strange you asked  
21 me that question, because that's the same question I've been  
22 wondering about for the last nine months.

23          I'm still waiting for a letter from the Governor's  
24 Office saying: Psych! It was a mistake!

25                               [Laughter.]

26          MR. KIM: The reason I say that is because of  
27 friends who -- the finalists, two other finalists, who made it  
28



1 to the Governor's Office with me. I see them now, and they're  
2 very qualified. They're very outspoken and so forth.

3 But back to the issue of qualification, I guess. I  
4 even wrote it down. All right.

5 This summer will be my fifth year in America, fifth  
6 year in California, I guess. And in that five-year process, I  
7 learned about being an immigrant, being an outsider, as well as  
8 being an insider, being an American, and so forth. I think  
9 that kind of qualifies me as representative of the population  
10 of California, since it's so diverse in everything.

11 I guess the second point is, I guess more important  
12 than the first, is my dedication to the state. California --  
13 it's kind of corny to say that, but California education has  
14 given me a lot, and I think being in this position, being the  
15 student member on the Board of Education, gives me a chance to  
16 give something back to the state. And that dedication is one  
17 of the most important qualifications, I feel, for this  
18 position.

19 SENATOR CRAVEN: Very good. Thank you very much.

20 Senator Petris.

21 SENATOR PETRIS: Who was Grace M. Davis?

22 MR. KIM: As I understand it, she was a very active  
23 member of the community in Modesto. There's a picture of her  
24 on the wall at our school.

25 I'm not really familiar with what she did, but as I  
26 understand it, she did a lot for our community.

27 SENATOR PETRIS: That's good enough.  
28



1 If you were to be given a magic wand or magic pen to draw a  
2 plan to improve our schools in this state, what would be the  
3 first three ingredients in the plan, if any?

4 MR. KIM: Three things.

5 First, I would say discipline. In the classrooms,  
6 I've noticed that teachers don't get the respect they deserve.  
7 There are a lot of students out there who don't think the  
8 education's as it should be. It should be a privilege. And  
9 they get so -- it's a great right, and they get -- they take it  
10 such a granted -- excuse me. They take it as if it was  
11 granted, and sometimes they abuse it.

12 SENATOR PETRIS: How do we change that?

13 MR. KIM: With more discipline, I guess. It's  
14 something in the families.

15 I guess the schools are relied as a baby-sitting  
16 place. They shouldn't be that. They should be a place for  
17 them to learn.

18 I think it goes back to the family structure, where  
19 parents parents should look at their children again, look at  
20 them and teach them what morals are really stand for.

21 SENATOR PETRIS: Do you get that at home?

22 MR. KIM: Yes. I'm really fortunate, I guess. My  
23 parents have been very supportive.

24 SENATOR PETRIS: That's one reason you're a student  
25 body president.

26 MR. KIM: I guess that helps.

27 SENATOR PETRIS: Thank you.  
28





1 MR. KIM: Thank you very much.

2 SENATOR CRAVEN: Very good response.

3 Senator Mello.

4 SENATOR MELLO: Thank you, Mr. Chairman.

5 Just out of curiosity, but I'm very interested in  
6 bilingual education, serving as the Chairman of the Senate  
7 Select Committee on Bilingual Education.

8 It appears that you came here four years ago?

9 MR. KIM: Four-and-a-half years ago.

10 SENATOR MELLO: And based on this article, you  
11 could not speak English when you got here.

12 MR. KIM: I guess newspaper articles, the press,  
13 has been a little bit not so truthful, I guess. They hid some  
14 truth.

15 I lived in Hong Kong for about three years before I  
16 came here, and I picked up a little bit of English there, so I  
17 had basic structures in English before I came.

18 SENATOR MELLO: So I guess what I'm getting at, how  
19 did you become so proficient in English in such a short period  
20 of time?

21 MR. KIM: I want to give credit to my Dad, Father.  
22 It was supposed to be, I guess, instead of putting me in the  
23 ESL class, I was placed in normal English and all that. I  
24 think I picked up English faster that way, being -- better than  
25 placed in an ESL setting where I would be taught something  
26 else. Being in general ed., being in normal classes, I think I  
27 picked up faster from my friends.  
28



1                   SENATOR MELLO: On a personal note, what have you  
2 chosen to be your career in a more adult life, once you get  
3 through your college years?  
4

5                   MR. KIM: Well, I haven't decided. There's so many  
6 things out there in the world. I haven't seen all of them yet,  
7 so I'm keeping my options open.

8                   SENATOR MELLO: Very good.

9                   I'm always impressed with people who come over here  
10 and so quickly adapt to the English language. My father was an  
11 influence on me. He finally said, you know, "We've got to  
12 speak English. That's what you have to do when you're here."

13                   I guess you were motivated by your parents as well  
14 in English. You've done very well. I surely commend you for  
15 that.

16                   I just wish you'll have a great career, and I know  
17 you'll make a real contribution here to California and the  
18 United States of America.

19                   MR. KIM: Thank you very much.

20                   SENATOR MELLO: Thank you.

21                   SENATOR CRAVEN: Is there anyone in the audience  
22 who wishes to speak on behalf of the nominee? Anyone in  
23 opposition? There appears to be none.

24                   SENATOR BEVERLY: Move approval of the nomination.

25                   SENATOR CRAVEN: Senator Beverly moves.

26                   Call the roll, please.

27                   SECRETARY WEBB: Senator Beverly.

28                   SENATOR BEVERLY: Aye.





1 SECRETARY WEBB: Beverly Aye.

2 Senator Mello.

3 SENATOR MELLO: Aye.

4 SECRETARY WEBB: Mello Aye.

5 Senator Petris.

6 SENATOR PETRIS: Aye.

7 SECRETARY WEBB: Petris Aye.

8 Senator Craven.

9 SENATOR CRAVEN: Aye.

10 SECRETARY WEBB: Craven Aye.

11 Senator Roberti.

12 Four to zero.

13 SENATOR CRAVEN: The measure is to the Floor.

14 Congratulations.

15 MR. KIM: Thank you very much.

16 SENATOR CRAVEN: Next is James Van Loben Sels,  
17 Director of Transportation.

18 SENATOR KOPP: Mr. Chairman, do you mind if I just  
19 testify quickly, succinctly?

20 SENATOR CRAVEN: I don't mind at all, except for  
21 the fact that Mr. Rollens told me that I had to hold the item  
22 which you are interested in until we get to another item on the  
23 agenda.

24 SENATOR KOPP: No, I'm interested in this item.

25 SENATOR CRAVEN: Oh, you're interested in this,  
26 excuse me. I thought you were talking about your waiver.

27 SENATOR KOPP: Mr. Chairman, Members of the  
28



1 Committee, I take the time to appear before the Rules Committee  
2 in support of the nomination of Mr. James Van Loben Sels as  
3 Director of CalTrans.

4 I recommend and ask that you recommend his  
5 confirmation unanimously.

6 While the Van Loben Sels family is a distinguished  
7 family in the history of California, particularly Alameda  
8 County, I never had the pleasure of meeting Mr. Van Loben Sels  
9 until last fall, after his appointment by the Governor.

10 As Chairman of the Transportation Committee of the  
11 Senate, I have had many discussions, I have had meetings with  
12 Mr. Van Loben Sels, and of course, correspondence regarding  
13 issues in California transportation.

14 His record obviously speaks for itself, and he will  
15 speak for himself.

16 I want to give you the benefit succinctly of my  
17 observation that he is competent. He is certainly dedicated to  
18 public service. He is highly familiar with the fact that his  
19 responsibility is the stewardship of a department that has  
20 become, in many ways, an ineffective bureaucracy. It is a  
21 department with approximately 19,000 employees, and a budget of  
22 about \$6 billion, yet very much needs an overhauling. And I've  
23 concluded that Mr. Van Loben Sels is the person who can provide  
24 the leadership for that overhauling.

25 So long, Mr. Chairman and Members of the Committee,  
26 I add this caveat, so long as he is given fully the opportunity  
27 to do so. So long that he is not curbed by the Agency or by  
28



1 any other level of state government. Naturally, the  
2 Legislature has the constitutional obligation of oversight with  
3 respect to the Department of Transportation, but I am convinced  
4 that Mr. Van Loben Sels merits confirmation for the reasons  
5 that I've stated, and because we have much at stake in assuring  
6 Californians a judicious Director of that department who is  
7 truly committed to reducing the overhead and to delivering and  
8 causing the delivery of the projects for which Californians are  
9 paying extra gasoline tax and higher truck weight fees.

10 SENATOR CRAVEN: Thank you very much, Senator.

11 Senator Petris.

12 SENATOR PETRIS: I think, coming from the  
13 distinguished Chairman of our Transportation Committee, that  
14 carries a lot of weight, particularly since there was some  
15 apprehension in the beginning, before you got to know him,  
16 about background and qualifications.

17 That's been overcome, obviously.

18 SENATOR KOPP: It has.

19 SENATOR PETRIS: Thank you.

20 SENATOR KOPP: Thank you.

21 SENATOR CRAVEN: Very good.

22 SENATOR MELLO: Mr. Chairman, Senator Kopp  
23 mentioned his family in Alameda County, but the true origin of  
24 this great family is Monterey County, where his grandfather,  
25 and father, himself, and many others, are very familiar with  
26 the area. I just wanted to add that to your statement.

27 SENATOR KOPP: Well, I became familiar with the Van  
28





1 Loben Sels family many years ago in the course of my legal  
2 practice, as a matter of fact.

3 I've never even asked Jim, because I can't remember  
4 the first name of probably a cousin.

5 SENATOR MELLO: That was back in the 1800s. I'm  
6 talking about --

7 [Laughter.]

8 SENATOR KOPP: We're talking about modern  
9 California history.

10 SENATOR PETRIS: May I ask a couple questions,  
11 Mr. Chairman?

12 SENATOR CRAVEN: Well, is this pre-emptory to his  
13 statement?

14 SENATOR PETRIS: No, after his statement.

15 SENATOR CRAVEN: Okay. Let us let him make the  
16 statement first, certainly.

17 It occurs to me, before Mr. Van Loben Sels speaks,  
18 that he's the second nominee here today of two-star rank, flag  
19 officer, served a career in the United States Army with great  
20 distinction.

21 We will ask you, as we have asked others, why you  
22 feel you are qualified to undertake this great burden, I guess,  
23 as Director of Transportation?

24 MR. VAN LOBEN SELS: Thank you very much,  
25 Mr. Chairman.

26 I really feel that my military background does  
27 bring experience and talent, but it's principally because it's  
28



1 been with the Army Corps of Engineers, principally, another  
2 organization like CalTrans, whose task is to do public works,  
3 to build infrastructure for the people, in their case, of the  
4 United States. And I come to CalTrans doing very much similar  
5 things. Leading a large, complex, geographically diverse and  
6 dispersed organization, composed of dedicated civil servants,  
7 which I found at CalTrans.

8  
9 But an organization which requires leadership. It  
10 requires managership, and like most bureaucracies, I don't use  
11 that terms as a pejorative term. That's what government  
12 service really is, an institution of framed -- systematic  
13 framework.

14 It requires change and redirection from time to  
15 time, and I found CalTrans to need that, to improve its  
16 delivery, to reduce its cost of doing business, to be more  
17 sensitive to the environment, and to care for its own  
18 employees, and to take full advantage of the great cultural and  
19 ethnic diversity we have in this great State of California.

20 So, I see that as both a challenge and a great  
21 opportunity. And I think my background and experience in  
22 contracting, in relationships with interest groups and with  
23 Legislators, will lend me the opportunity to do some good. And  
24 I look forward to that opportunity, subject to your  
25 concurrence.

26 SENATOR CRAVEN: Thank you.

27 Senator Petris.

28 SENATOR PETRIS: I'm interested in the smoking





1 policy on the trains. You probably heard me ask that.

2 MR. VAN LOBEN SELS: Yes, sir.

3 SENATOR PETRIS: First of all, it's against the  
4 law. And yet, we have a policy established of permitting  
5 smoking in the first five rows.

6 Can you comment on that?

7 MR. VAN LOBEN SELS: Yes, I'd like to do that very  
8 much.

9 I'm aware of your concern, and did a little  
10 research. The state law correctly says, as you're very much  
11 aware, in public conveyances, you're not supposed to smoke.

12 But in regard to Amtrak, it's -- and it includes  
13 Amtrak, and then there's a parenthetical phrase that says, "As  
14 provided -- Except as provided by federal law."

15 And Amtrak's view from reading of the federal laws,  
16 they have the the right to set standards of service. And  
17 Amtrak has been unwilling to eliminate smoking on their trains,  
18 and their trains, whether they run them or we contract with  
19 them to run them. They feel they have the authority to set the  
20 levels of service, including whether or not --

21 SENATOR PETRIS: Well, there's been litigation on  
22 this over the years, not on this specific train, but the key is  
23 what does service mean.

24 MR. VAN LOBEN SELS: Yes, sir.

25 SENATOR PETRIS: Does service mean providing booze,  
26 food, or does it extend to whether or not you can smoke?

27 Our counsel believes that we do have authority,  
28



1 Legislative Counsel believes we do have authority to prohibit  
2 smoking. He expressed that at the time the legislation was  
3 first carried and has repeated it since. So, we may have a  
4 conflict in interpretation there, which, of course, is part of  
5 life. You can find two sides to just about any issues, I know  
6 that.

7  
8 MR. VAN LOBEN SELS: Let me go on to say that I  
9 agree with you wholeheartedly, particularly on the Capitol  
10 corridor, running between Sacramento and San Jose, we should  
11 not have smoking on that train.

12 SENATOR PETRIS: That's the one I'm concerned  
13 about.

14 MR. VAN LOBEN SELS: A month ago, more than a month  
15 ago, I wrote to Amtrak in Washington and said I would like you  
16 to run a demonstration project to demonstrate that you are not  
17 going to lost ridership by stopping smoking on relatively short  
18 runs. In fact, I think they ought to, in my view, have the  
19 same standard as the airline industry: a four or five hour  
20 trip, you can make it without smoking.

21 I don't have an answer yet, but it's my objective  
22 to press that.

23 SENATOR PETRIS: I'm glad to hear that. It's a  
24 state-funded train, though; isn't it?

25 MR. VAN LOBEN SELS: Yes, sir.

26 SENATOR PETRIS: The Hannigan bill and the bonds  
27 enacted by the people?

28 MR. VAN LOBEN SELS: That's correct, and we should



1 have a say.

2 SENATOR PETRIS: Yeah, I would think so.

3 I guess that was incorporated in your information  
4 to them in the letter.

5 MR. VAN LOBEN SELS: Precisely.

6 SENATOR PETRIS: I have one other area, and that's  
7 the fares. I understand that since the fare change went into  
8 effect, there's been a big drop in the use of the trains.

9 What is the status of that now?

10 MR. VAN LOBEN SELS: What we had in the early days  
11 in the beginning, as a good marketeer would, we had some  
12 promotional fares. We had some two-for-one opportunity and  
13 return for a dollar.

14 And when they ended, we ended the two-for totally,  
15 and then over the Easter period, we backed out of the one  
16 dollar return.

17 The result was expected. On the weekends,  
18 ridership did drop. During the week, it did not. The  
19 ridership still, even with the reduction, has exceeded and  
20 continues to exceed our expectations.

21 We will continue to examine promotional  
22 opportunities to introduce more and more people to the train,  
23 and then encourage them to do it on a routine basis.

24 Our biggest challenge is, in the early days, was to  
25 get enough cars to meet the needs on the weekends. And right  
26 now, we're in a little more comfortable position, but we want  
27 the riders.  
28





1           SENATOR PETRIS: Are cars that scarce? Is that  
2 because Amtrak has had a lot of success --

3           MR. VAN LOBEN SELS: Amtrak is having some success  
4 around the country. We had to, on weekends, we borrowed cars  
5 from the Peninsula commute line, down the peninsula, where they  
6 didn't need them on the weekends. So, we borrowed cars to run  
7 on this line during weekends.

8           SENATOR PETRIS: I guess the use of Amtrak  
9 generally today is much higher than it was in the early days?

10          MR. VAN LOBEN SELS: Yes, it is.

11          SENATOR PETRIS: They were really struggling for a  
12 while, and they almost got eliminated by national policy.

13          But their ridership is up significantly, isn't it?

14          MR. VAN LOBEN SELS: And we're contributing to that  
15 here in California since the great success is between Los  
16 Angeles and San Diego. In fact, we're nearly paying for  
17 itself. The fare box ratio is 99.6 percent, which is nearly  
18 paying for itself off the fare box.

19          SENATOR PETRIS: Do you subsidize the other runs at  
20 all?

21          MR. VAN LOBEN SELS: Yes, we do.

22          SENATOR PETRIS: Oakland to L.A., for example?

23          MR. VAN LOBEN SELS: No, not their regular runs.

24          SENATOR PETRIS: That's a regular run.

25          MR. VAN LOBEN SELS: That's their regular runs. We  
26 do subsidize the San Joaquin, from Bakersfield up to Stockton  
27 and into the Bay Area at about -- the fare box return there is  
28



1 about 66 percent at this time, but it tends to grow over time.  
2 And as it rises, as we intend to do and want to do very much in  
3 the San Joaquin, is add another train, because part of it, of  
4 your objective, is to increase ridership and increase service.  
5 And our hope on the Capitol corridor, by the end of this  
6 decade, is to have six trains a day, so that you have -- you  
7 can go to the City on one train, have a meeting, and then don't  
8 have to wait until the end of the day to get back on the train.

9  
10 SENATOR PETRIS: I want you to know, this isn't  
11 your line, but you're going in that direction. I think it's  
12 great.

13 I took a ride to Santa Barbara last year in  
14 November on the regular Amtrak run, and I just thought it was  
15 great. The dining car service was great.

16 The last time I rode in a so-called dining car, it  
17 was full of vending machines where you get some pop and a  
18 sandwich. This was full service dining, excellent food,  
19 reasonable rates, and so forth.

20 Does this train run by contract with the state? Do  
21 you make a contract with --

22 MR. VAN LOBEN SELS: We made a contract with  
23 Amtrak.

24 SENATOR PETRIS: For how long? One or two years at  
25 a time?

26 MR. VAN LOBEN SELS: I don't know what the length  
27 of the contract is. I expect it's a year with options to  
28 renew.





1           SENATOR PETRIS: I would recommend that maybe you  
2 can get them to agree to ban smoking as part of the contract.

3           MR. VAN LOBEN SELS: I promise I'll work hard at  
4 that.

5           SENATOR PETRIS: Thank you very much.

6           SENATOR CRAVEN: Senator Mello.

7           SENATOR MELLO: I don't have any questions, but Mr.  
8 Reyes is here. He had presented me a list of questions that he  
9 had based on affirmative action. He may want to testify, and  
10 then I got a copy of Mr. Van Loben Sels's response.

11           After his questions, it might be good to have this  
12 made part of the record so we can have your response in the  
13 transcript as well as his questions.

14           MR. VAN LOBEN SELS: Yes, sir.

15           SENATOR CRAVEN: And who are you speaking of?

16           SENATOR MELLO: Mr. Eugene Reyes. He's sitting  
17 there.

18           Were you going to ask your questions?

19           MR. REYES: Senator, I'm not prepared to ask the  
20 question. I was going to make several other comments.

21           SENATOR MELLO: It's up to the Chairman. This is  
22 the time you can testify and make comments.

23           SENATOR CRAVEN: Very well.

24           If there are no other questions of the Members,  
25 fine. Please go ahead.

26           MR. REYES: My name is Gene Reyes, and I represent  
27 the ALIANZA, which is a group of Native Americans, and Hispanic  
28



1 business men and women in California.

2 And we took a very strong interest in this  
3 confirmation for Mr. Van Loben Sels, because of the tremendous  
4 impact that that Department has financially and employment in  
5 terms of Hispanics in the State of California and American  
6 Indians, the opportunities for contracts, contracting  
7 opportunities are tremendous and are very important to this  
8 particular group of people.

9 Initially, we had indicated that we had various  
10 concerns which were sent out to you in a letter. Those  
11 concerns in detail, fortunately we were able to meet and  
12 discuss point by point.

13 I submitted a report to you on every one of those  
14 points, and we feel very happy with the results. Every one of  
15 those points was addressed, particularly that dealing with  
16 affirmative action.

17 We're very pleased with the position and the  
18 results that have -- that were made available to us since the  
19 term that the Director has been in office in his position, thus  
20 culminating in modifying our position initially, which was to  
21 be in opposition to the confirmation, to where we are now, we  
22 are recommending confirmation of the Director.

23 SENATOR MELLO: Mr. Chairman, with that, if I may  
24 ask Mr. Reyes then, and both Mr. Van Loben Sels, the Rules  
25 Committee does have copies of the questions brought up by  
26 ALIANZA dealing with affirmative action and the contracts in  
27 bidding for women and minority businesses, and then Mr. Van  
28



1 Loben Sels has submitted what I thought was a good response to  
2 each and every question here.

3 Just to more formally get their responses on the  
4 record, if I may ask that these letters be given to our  
5 transcript and be added to the file.

6 SENATOR CRAVEN: Please do. Very well, thank you.  
7 Thank you very much. We appreciate it.

8 Mr. Johnston, Gerald W. Johnston, wishes to  
9 testify. Mr. Johnston has been with us before.

10 MR. JOHNSTON: Good afternoon. My name is Gerald  
11 W. Johnston, and I am Managing Editor for the Small Business  
12 Exchange, also the original founder or one of the original  
13 founders of the Advisory Council, which is now called the  
14 Business Council of CalTrans, and have been a very keen critic  
15 and admirer of the CalTrans Business Council and the CalTrans  
16 Office of Civil Rights. And currently, Mrs. Algerine McCray,  
17 who is the Chief of the Office of Civil Rights, I've had a  
18 great deal of admiration and worked very closely with her.

19 In fact, this coming week, we are putting out a  
20 special edition, which is a salute to CalTrans. And we are  
21 doing a salute to CalTrans because of the fact that, of all the  
22 major agencies in the State of California, CalTrans is the  
23 leading agency that is providing business opportunities and  
24 jobs to minority business of all ethnic persuasions, including  
25 women. And I think it's time that we recognize the significant  
26 contribution that this Agency makes and can make in the future  
27 for minority business and the minority business community.  
28





1                   Within the package that I've given you, it  
2 demonstrates there is in that package a letter from the  
3 Governor that would appear in the special edition, which  
4 salutes Mr. Van Loben Sels and Mrs. Algerine McCray for  
5 outstanding performance.

6                   Clearly, Mr. Van Loben Sels is seven months into  
7 the program, but in discussing with Algerine McCray and some of  
8 the people who implement the affirmative action and the program  
9 for CalTrans, they speak very highly of Mr. Van Loben Sels.  
10 And I've sat in on a couple of meetings that he's sat in on the  
11 Council, and I'm very impressed with Mr. Van Loben Sels. And I  
12 think that he will carry on the tradition that has taken place  
13 within CalTrans of providing contracts and opportunities to  
14 minority and women businesses.

15                  Also in that package there's a survey, one done by  
16 Associated General Contractors, which they had attempted to  
17 demonstrate that the -- what they call special preferences  
18 wasn't working. When you read that -- that survey, you will  
19 find that it is, and working very well in providing jobs.

20                  And so, I think that the CalTrans have a real key  
21 role to play in providing the kind of economic opportunities  
22 that is going to be required in the coming years to help  
23 develop a minority community.

24                  The other part of that survey is a survey that  
25 we've done as a newspaper, which demonstrates again that  
26 CalTrans are providing for all the construction that goes to  
27 minority and women businesses in California, CalTrans is  
28



1 providing 11 percent of the total to all the construction,  
2 which is, again, a very significant piece of business for  
3 minority business in the State of California.  
4

5 So with that, I understand that there was criticism  
6 of the program and of the person who's who chief of the Office  
7 of Civil Rights. And I came here for two reasons. One, to  
8 support the confirmation, and to support the program that is  
9 being implemented in the Office of Civil Rights.

10 SENATOR CRAVEN: Thank you very much, Mr. Johnston.  
11 We appreciate it.

12 Is there anyone else that wishes to testify?

13 MR. SELIX: Rusty Selix, representing the  
14 California Association of Councils of Governments, which  
15 includes the Regional Transportation Agencies, and our elected  
16 official delegates and executive directors who work close with  
17 Mr. Van Loben Sels.

18 They've asked me to come and indicate their strong  
19 support. They've found that he is doing an incredible job of  
20 building the partnerships necessary to make the transportation  
21 system of this state work, particularly in light of the major  
22 changes in federal law which require completely new working  
23 relationships. And we are most impressed with his masterful  
24 skill in bringing everybody together, and commend him to you.

25 SENATOR CRAVEN: Very good, thank you.

26 There appears to be no further comment. Oh, there  
27 is someone, excuse me.

28 MR. KNOX: I'm sorry. I'd just like to add my



1 voice to the chorus.

2 Jim Knox, with the Planning and Conservation  
3 League. I'm the Urban Affairs Director, dealing primarily with  
4 transportation issues.

5 Over the years, we've endured a great deal of  
6 frustration with CalTrans because of what we perceived to be  
7 institutional bias against rail and other forms of transit.

8 We find Mr. Van Loben Sels to be a breath of fresh  
9 air. We have found him to be accessible, open-minded, and  
10 seems to have a very sincere interest in orienting CalTrans so  
11 that it is multi-modal and a balanced system.

12 Just to give you an example, when Mr. Van Loben  
13 Sels first came on board, we arranged a meeting of all the  
14 leaders in the environmental groups to meet with him. As far  
15 as I know, that sort of a dialogue is unprecedented. We talked  
16 about everything from road salt to high-speed rail, and expect  
17 to have that dialogue continue and wish to strongly support his  
18 confirmation.

19 SENATOR CRAVEN: Thank you very much, sir.

20 Now.

21 SENATOR BEVERLY: Move approval of the nomination.

22 SENATOR CRAVEN: Senator Beverly moves.

23 Call the roll, please.

24 SECRETARY WEBB: Senator Beverly.

25 SENATOR BEVERLY: Aye.

26 SECRETARY WEBB: Beverly Aye.

27 Senator Mello.  
28





1 SENATOR MELLO: Aye.

2 SECRETARY WEBB: Mello Aye.

3 Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris Aye.

6 Senator Craven.

7 SENATOR CRAVEN: Aye.

8 SECRETARY WEBB: Craven Aye.

9 Senator Roberti.

10 Four to zero.

11 SENATOR CRAVEN: Very good, to the Floor.

12 [Thereupon this portion of the

13 Senate Rules Committee was

14 terminated at approximately

15 5:12 P.M.]

16 --oo0oo--



CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 12<sup>th</sup> day of May, 1992.

  
EVELYN J. MIZAK  
Shorthand Reporter





## DEPARTMENT OF TRANSPORTATION

OFFICE OF THE DIRECTOR

1120 N STREET

P.O. BOX 942873

SACRAMENTO, CA 94273-0001

(916) 654-5267

FAX (916) 334-8677 XXXXXX 654-6608

TDD (916) 445-1945 XXXXXX 654-4014



May 6, 1992

Mr. Eugene V. Reyes  
ALIANZA Representative  
1606 H Street, Suite B  
Sacramento, CA 95814

Dear Mr. Reyes:

This correspondence serves to reiterate my commitment to Affirmative Action and Equal Opportunity in both Caltrans employment and business.

As Director, the first policy I issued was on Affirmative Action and Equal Opportunity. I did this because I value the need for inclusion of all segments of the California population in their search for Caltrans opportunities in employment business and services.

The following are my responses to the points we discussed during our meeting of May 5, 1992.

1. I am committed to bring "bid shopping" or any other types of abuses to a halt. As you know, I have reduced the period for the contractor to submit the related documentation from about ten days to four days. Cooperative efforts are now being made to enhance communication and understanding between minority and nonminority businesses of the implications of the 2nd Friday Letter and of business relationships in general. It is important that this be concluded before any further adjustments to the 2nd Friday Letter are made. I will include your organization in this process.
2. I agree there is a need for the Caltrans top leadership to be more visible in the Caltrans Business Council (CBC) meetings. While the Chief, Division of Civil Rights will be responsible for the implementation of this function, I, my Chief Deputy Director or any one of the Deputy Directors will attend all the general sessions of the CBC meetings.
3. Caltrans will pursue the recommendation of having private business representatives participate or observe in the selection and evaluation process of professional engineering firms.
4. As indicated, Morrison Knudsen Corporation has informed us of their commitment to use their best efforts to achieve the Caltrans DBE/WBE goals of 15%/5%. The concept of establishing an entity such as "Transit Program Review Board" has merit and will be considered for adoption.



Mr. Eugene V. Reyes

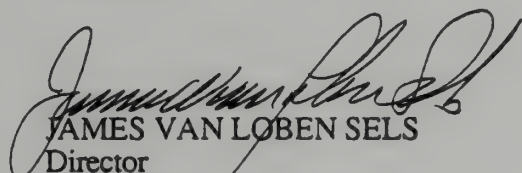
Page 2

May 6, 1992

5. Yes. We support the recommendation to have "bid fairs" or "business fairs" to enhance the continuing participation of minority and women owned businesses for goods and services. We will establish a schedule to have these fairs done periodically.
6. Yes, we agree with your recommendation. We will establish an employment council that represents everyone. We are committed to emphasize Hispanic representation at all levels. Caltrans welcomes the opportunity to enhance the dialogue between the Department and the minority, women and disabled organizations. I will seriously consider the establishment of a more formalized advisory committee to enhance the implementation of the Affirmative Action Program.
7. I agree to establish a Hispanic employment segment as part of the Department's Affirmative Action Plan. I am professionally and personally committed to increase Hispanic representation in the Caltrans work force. Since October, 1991, when I first arrived at Caltrans, the Hispanic employment rate was 11.9%. Today the rate is 16.1%, and, I'm sure it will continue to improve. The best news, however, is that the affirmative action goal to increase representation of Hispanics in the Caltrans work force by 0.6% was reached during the third quarter. We expect to do better when the last quarter is accounted for at the end of the fiscal year. Finally, I have made two Career Executive Assignments (CEAs) during my brief tenure as Director. It happens that these two individuals are Hispanics. One is a Hispanic woman.
8. You are right. Yes, we already are taking action. Caltrans is also concerned about the disproportionality of adverse actions taken against Hispanics and Blacks. Despite the fact that this disproportionality is typical in other State agencies and that it has been acknowledged by the State Personnel Board, Caltrans has initiated several steps to address this issue. First, Caltrans has an in-house adverse actions task force under the umbrella of the labor relations unit. This task force is made up of representatives of our various Affirmative Action employee advisory committees. The task force looks for ways of addressing the issue internally. Also, Caltrans has developed an in-house data base to begin collecting information of all disciplinary actions. This data will show management any potential problems or trends that would need a closer look. There are several other actions being employed by the Department that we would be eager to share with you in more depth. I invite the ALIANZA to be part of this task force to help us find solutions to this difficult and sensitive problem.

I am appointing Mr. Jose Perez to follow-up with you on these items. I trust this accurately reflects our dialogue. Should you have any further questions, please don't hesitate to contact me directly.

Sincerely,



JAMES VAN LOBEN SELS  
Director





# A L I A N Z A

## Board of Directors

EDMUNDO LOPEZ  
President

ED VELARDE  
Vice-President

PAUL GUERRERO  
Treasurer

ROLANDO ARANGO  
Secretary

May 6, 1992

## Senate Rules Committee Members

Subject: James van Loben Sels confirmation hearing as Director -  
Department of Transportation.

## Members

California Citizenship Foundation

California Hispanic Professionals Association

California Indian Business Association

Chicano Federation of San Diego

FELAD/INAGE of Vallejo

Hispanic Contractors Association

Latin Business Association

National Council of America

National Indian Contractors Association

Northern California Latin Business Association

Society of Hispanic Professional Engineers

United Latino Political Association

United Minority Business Entrepreneurs

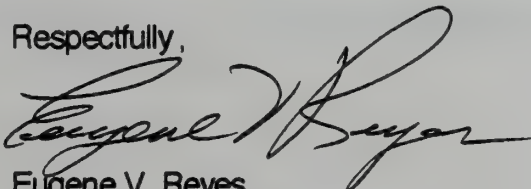
Dear Senators:

Attached is: (1) the letter dated May 5, 1992, submitted to you as a notice that ALIANZA, Inc., would be testifying in opposing to Mr. James van Loben Sels confirmation as Director of the Department of Transportation, (2) the document identifying the areas of concern that ALIANZA, Inc. had as justification for its position of opposition and (3) the corresponding responses of Mr. James van Loben Sels as a result of a meeting held on May 5, 1992.

As indicative by the positive response of Mr. James van Loben Sels, ALIANZA now goes on record in support of his confirmation.

Also, we request the opportunity to return in six month and report on the progress made on these agreements.

Respectfully,



Eugene V. Reyes  
ALIANZA Representative  
(916) 444-0940

ER:lr





# A L I A N Z A

Board of Directors

May 5, 1992

EDMUNDO LOPEZ  
President

ED VELARDE  
Vice-President

PAUL GUERRERO  
Treasurer

ROLANDO ARANGO  
Secretary

## Senate Rules Committee Members

Subject: James van Loben Sels Confirmation Hearing - Director of Transportation.

Dear Senators:

Members

Alianza, Inc. is an alliance of Hispanic and American Indian business, employment and political organizations statewide.

California Offensio Foundation

We strongly oppose the confirmation of Mr. James van Loben Sels as director of the State Department of Transportation and urge that he not be confirmed by the Senate Rules Committee.

California Hispanic Professionals Association

California Indian Business Association

Mr. van Loben Sels has directed Cal-Trans for about eight months. During this time he has shown to be insensitive and non-caring about the adverse impact his actions and policies are having and will continue to have on us. We are an increasingly significant element of California's economic and political future which must not be ignored.

Chicano Federation of San Diego

CELANO/INACE of Vallejo

Hispanic Contractors Association

We have specific concerns with Mr. van Loben Sels dealing with a wide range of issues, which will be presented at the time of the hearing.

Latin Business Association

National Council of America

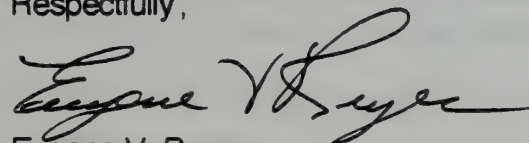
Several of our members and myself will testify at Mr. van Loben Sels confirmation hearing.

National Indian Contractors Association

Respectfully,

Northern California Latin Business Association

Society of Hispanic Professional Engineers



United Latino Political Association

Eugene V. Reyes  
ALIANZA Representative  
(916) 444-0940

United Minority Business Entrepreneurs



## A L I A N Z A

May 5, 1992

The major concerns of ALIANZA with Mr. van Loben Sels are his detrimental and destructive actions, policies and procedures related business practices, community relations and a representative work force.

## #1 CONCERN:

Mr. van Loben Sels personally signed a policy statement putting in place an underground regulation that is highly detrimental to the development and growth of minority owned firms. This has to do with allowing bidders on its highway construction projects to submit the names of minority owned firms, that will be used to meet established goals, four days after bid opening. This encourages bid shopping which is illegal and unethical and forces minority firms to undercut themselves which, in many cases leads to bankruptcy.

## RECOMMENDATION:

We recommend that this policy be rescinded and that it be replaced with one that requires bidders to submit with their bids the names of minority firms to be used for meeting goals and the dollar amount.

## #2 CONCERN:

Mr. van Loben Sels reneged on his public commitment to work directly and personally with the Caltrans Business Council, to which several of our members belong. This was to highlight his commitment to minority business.

Prior to Mr. van Loben Sels, the Business Council was chaired by a Deputy director with the full commitment of the Director and with attendance of the other deputies.

The Business Council is now directly under one of his Divisions with no visible support from him nor his deputies.

This change has sent a strong message to the construction industry that Caltrans does not have a strong commitment to minority business participation. Mr. van Loben Sels positioning is having a major adverse impact on our businesses.





#### RECOMMENDATION:

That Mr. van Loben Sels personally chair the Business Council and that he require the involvement and attendance of his deputies. This way the commitment will be from the directorate of Caltrans and accountability can be held at this level where it should be.

#### #3 CONCERN:

The selection process and evaluation for minority business participation in the professional engineering services contracts are inherently discriminatory. Hispanic and American Indians have a very difficult time obtaining work as prime consultants due to notions that minorities cannot perform. Mr. van Loben Sels has been advised of this and yet he has not taken any action.

#### RECOMMENDATION:

That Hispanic and American Indians and other minorities participate in the selection and evaluation process of professional engineering firms. This will provide some assurance that the process will be equitable and fair. This needs to be accompanied with the establishment of goals for minority business participation as prime consultants. Absent this a rotational system would work also.

#### #4 CONCERN:

Mr. van Loben Sels has initiated exclusionary policies in the Transit/Mass Transportation program. he approved a non-quantified Disadvantaged Business Enterprise goal for the building of the California Car project in Los Angeles. This resulted in only 3% participation.

Current law requires a 15% minority business goal and a 5% women business goal for state funded projects and Caltrans has a 20% DBE for federally funded projects. Mr. van Loben Sels was out of line. We can not afford this type of system exclusion.

#### RECOMMENDATION:

That Mr. van Loben Sels establish a Transit Program Review Board which would include proportionate representation of the minority communities. This Board would assist Caltrans in getting meaningful participation from all Californians in all aspects of the Transit program.





**#5 CONCERN:**

Mr. van Loben Sels exclusionary policies and positions are having an adverse impact on minority business participation in the direct purchasing of goods and services by Caltrans districts.

Our members report that since Mr. van Loben Sels came to Caltrans there has been a change in the attitude of the purchasing staff. They no longer seem committed to doing business with minority firms and sales to Caltrans have declined.

**RECOMMENDATION:**

That Mr. van Loben Sels establish a schedule of monthly or quarterly "Bid Fairs" where actual bids for goods and services are taken and when possible make awards at the events. This will provide for active hands on participation by Caltrans and everyone else. Hispanic, American Indians, minorities in general will have greater participation.

**#6 CONCERN:**

Mr. van Loben Sels disregarded advise, counsel and appeals made to him by Hispanics to hire a Deputy Director of Administration that would be accessible, approachable and sensitive to the employment issues of Hispanic, American Indians and other minorities. Mr. van Loben Sels hired the one individual with whom there is no trust nor confidence and no relationship. This decision is having an adverse impact particularly on Hispanics.

Prior to Mr. van Loben Sels, there was the Hispanic Employment Advisory Task Force whose mission was to assist Caltrans improve Hispanic representation in its workforce. This task force was very effective. Then there was the Caltrans Employment Advisory Council whose mission was to help Caltrans with its overall employment needs. This Council was quite successful up to Mr. van Loben Sels presence in Caltrans.

Hispanics and American Indians feel that Mr. van Loben Sels complete disregard for their recommendations and his aloofness showed that he has no interest in a work force that is representative of the people that make up the State of California. For these reasons they no longer wanted to invest their time and efforts assisting Caltrans.

The Caltrans Employment Advisory Council has since been disbanded by Mr. van Loben Sels.

**RECOMMENDATION :**

That Mr. van Loben Sels re-establish the Caltrans Hispanic Employment Advisory Task Force as an indication of his commitment to bring Hispanics up to parity like other groups in the Departments. Also that Hispanics and American Indians participate in panels for the selection of high level management positions.



**#7 CONCERN:**

Mr. van Loben Sels is not interested in honoring the commitments to Hispanic employment representation made by Caltrans under the previous Director. he has totally disregarded the Caltrans Hispanic Employment Plan which was approved and agreed and signed by the previous Director.

Hispanic representation is getting worse in Caltrans, especially with the 1990 census count.

Absent two Hispanic Districts Directors and two assistant directors Caltrans has no Hispanic nor American Indian representation in its management ranks.

**RECOMMENDATION :**

That Mr. van Loben Sels commit to the Hispanic Employment Plan agreed to prior to his presence in Caltrans. This plan would include parity in the deputy director ranks, parity in district director ranks, parity in the district deputy director ranks.

We strongly recommend, again, the reestablishment of the Caltrans Hispanic Employment Advisory Task Force.

**#8 CONCERN:**

Mr. van Loben Sels has shown through his policies and positions that he tolerates what appears to be disparate treatment in the application of disciplinary action against Hispanics and American Indians. For this reason we are very concerned for the increasing number of adverse actions taken against Hispanics in Caltrans. Hispanics get a disproportionate greater number of adverse actions taken against them than any other group.

We feel that Caltrans discriminates against Hispanics which causes the disproportionately high number of adverse actions.

**RECOMMENDATION:**

That an investigation be conducted to review Caltrans policies and procedures and actual practices when dealing with disciplinary action and take corrective measures.





**198-R**

Additional copies of this publication may be purchased for \$6.25 per copy **plus current California sales tax.**

Senate Publications  
1100 J Street, B-15  
Sacramento, CA 95814

Make checks payable to SENATE RULES COMMITTEE.

**Please include Senate Publication Number 198-R when ordering.**



L 500  
R 9  
no. 19  
5/13/92

HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



DOCUMENTS DEPT.

MAY 21 1992

STATE OF CALIFORNIA

STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 13, 1992  
2:03 P.M.



1 SENATE RULES COMMITTEE  
2 STATE OF CALIFORNIA  
3  
4  
5

6 HEARING  
7  
8  
9

10 STATE CAPITOL  
11  
12 ROOM 113  
13  
14 SACRAMENTO, CALIFORNIA  
15  
16  
17

18 WEDNESDAY, MAY 13, 1992  
19 2:03 P.M.  
20  
21  
22  
23  
24

25 Reported by:  
26  
27

28 Evelyn J. Mizak  
Shorthand Reporter



APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ROBERT P. MARTINEZ, Director  
Department of Economic Opportunity

SENATOR HERSCHEL ROSENTHAL, Chair  
Senate Committee on Energy and Public Utilities

CARLOS ALCALA  
CAFE, Black Advocates in State Service

JOHN LEMMONS, Consultant  
CAFE

ANITA CARTER, Employee  
Department of Economic Opportunity

PAUL BOCANEGRA, President  
Sacramento Chapter  
CAFE

GEORGE L. ORTIZ, Chairman  
Board of Directors  
La Cooperativa Campesina de California

MICHAEL S. JONES  
Proteus, Inc.





APPEARANCES (CONTINUED)

DAVID C. GONZALEZ  
Association of Southern California Energy Providers

RAUL MAYNELES  
La Cooperativa

ZIGMUND VAYS, Chair  
Legislative Committee  
Association of Southern California Energy Providers

DOUGLAS W. RISLING, Executive Director  
Northern California Indian Development Council

GREGORY FEARON, Past Chair  
Board of Directors  
Sonoma County People for Economic Opportunity

LEO AVILA, State Chair  
American G.I. Forum

WILLIAM F. PARKER, Executive Director  
Community Action Agency of San Mateo County, Inc.  
President, Bay Area Poverty Resources Council

BARBARA VAUTHIER, Executive Director  
Cal/Neva Community Action Association

JIM EVANS, Executive Director  
Calaveras-Mariposa Community Action Agency  
Member, Board of Directors  
California Coalition of Rural Housing

VAL MARTINEZ, President  
Association of Rural Northern California Energy Providers

JAN KURIS DOHERTY  
City of Los Angeles  
Community Development Department



INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
ROBERT P. MARTINEZ, Director Department of Economic Development	1
Introduction and Support by SENATOR HERSCHEL ROSENTHAL, Chair, Senate Committee on Energy and Public Utilities	1
Background and Experience	1
State Controller's Concern	2
Reorganization of Department	3
Equal Employment Opportunity Issues	4
<u>Witnesses in Opposition:</u>	
CARLOS ALCALA, Attorney CAFE and BASS	5
Request for Postponement of Confirmation	5
Preparation of Preliminary Investigative Report into Complaints of Discrimination	6
Questions by SENATOR PETRIS re:	
Status of Cases	7
Reason for Request to Rules Committee	7
Group Advised Not to Address Issue at This Forum	8
Specific Request	8
Amount of Time Requested for Postponement	9
Response by MR. MARTINEZ re:	
Lack of Knowledge of Complaints	9
EEOC Process Underway	10



1		
2	Willingness to Meet and Discuss	
3	Any Issues	10
4	Postponement Inappropriate	11
5	Discussion	11
6	Statements by SENATOR PETRIS re:	
7	Lack of Complaints to Director	12
8	Response by MR. ALCALA	12
9	Matter of Basic Fairness	13
10	Preparation of Preliminary Investigative	
11	Report	14
12	JOHN LEMMONS, Consultant	
13	Mr. Alcala	15
14	Results of Investigation	15
15	Sale of T-Shirts	17
16	Reorganization	18
17	Evaluation Criteria Used in Investigation	18
18	Statements by MR. ALCALA re:	
19	Conclusion of Report	19
20	Response by MR. MARTINEZ re:	
21	Scope of Employee Interviews in Investigation	20
22	Need for Complaints to Continue through	
23	Formal Processes	21
24	Commitment to Meet and Discuss Discrimination	
25	Complaints	21
26	Need to Go Forward with Confirmation	22
27	Statements by CHAIRMAN ROBERTI re:	
28	Pending Personnel Cases	22
	Response by MR. MARTINEZ re:	
	Seriousness of Matters	24





1		
2	Letters to DPA Appealing Employee Designations	24
3		
4	Inference of Racism and Prejudice	24
5	ANITA CARTER, Employee	
6	Department of Economic Opportunity	25
7		
8	Grievance Process	25
9		
10	Receipt of Letter in Retaliation	25
11	Questions by SENATOR PETRIS re:	
12	Instigation of Retaliation	26
13	Procedure Followed	26
14	Reasons Given for Rejecting Grievance	27
15	Filing of Compliant with EEOC	28
16	Lack of Promotion	28
17	Questions by SENATOR PETRIS re:	
18	Nature of Retaliation	29
19	Responsibility of Director	30
20	Response by MR. MARTINEZ re:	
21	Recall File	30
22	Lack of Knowledge of Entire File	30
23	Relationship with Immediate Supervisor	31
24	Questions by SENATOR PETRIS re:	
25	Job Classification	31
26	Promotion of Lower Scoring Employees	31
27	PAUL BOCANEGRA, President	
28	Sacramento Chapter	
	CAFE	32
	General Enviroment at DEO	32
	Request for Postponement	32



1		
2	Background Several Cases	33
3	Russell Salazar	33
4	Personal Case	33
5	Questions by SENATOR PETRIS re:	
6	Tenure with Department	35
7	Statements by CHAIRMAN ROBERTI re:	
8	Inclination to Vote for Confirmation	36
9	Take up Vote Following Week	37
10	Request for Director to Meet with Opposition	37
11	<u>Witnesses in Support:</u>	
12	GEORGE ORTIZ, Chairman	
13	Board of Directors	
14	La Cooperativa Campesina de California	38
15	MICHAEL JONES	
16	Proteus, Inc.	38
17	DAVID CHARLES GONZALEZ	
18	Association of Southern California Energy Providers	38
19	Questions by SENATOR PETRIS re:	
20	Nature of Organization	39
21	RAUL MEYRELES, Director	
22	La Cooperativa	39
23	SIGMUND VAYS, Chairman	
24	Legislative Committee	
25	Association of Southern California Energy Providers	40
26	DOUGLAS W. RISLING, Executive Director	
27	Northern California Indian Development Council, Inc.	40
28	GREGORY FEARON, Past Chairman	
	Board of Directors	
	Sonoma County People for Economic Opportunity	41
	LEO AVILA, State Chair	
	American G.I. Forum	41



1		
2	WILLIAM PARKER, Executive Director	
3	Community Action Agency of San Mateo County	
4	President, Bay Area Poverty Resources Council	41
5	BARBARA VAUTHIER, Executive Director	
6	Cal/Neva Community Action Association	42
7	JIM EVANS, Executive Director	
8	Calaveras-Mariposa Community Action Agency	
9	Member, Board of Directors	
10	California Coalition of Rural Housing	43
11	VAL MARTINEZ, President	
12	Association of Rural Northern California Energy	
13	Providers	43
14	JAN KURIS DOHERTY	
15	City of Los Angeles	
16	Community Development Department	44
17	Statement of Intent to Hold Confirmation	
18	over for One Week by CHAIRMAN ROBERI	44
19	Termination of Proceedings	45
20	Certificate of Reporter	46
21		
22		
23		
24		
25		
26		
27		
28		





## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Now Senator Rosenthal has arrived.  
Do you want to take Mr. Martinez first?

SENATOR ROSENTHAL: Either one; I'm prepared for  
both.

CHAIRMAN ROBERTI: Senator Rosenthal wants to take  
Mr. Martinez first. Since he's the visiting Chair, I'm going to  
defer to Senator Rosenthal on this.

SENATOR ROSENTHAL: Mr. Chairman, Members, I want to  
commend the Governor. Take a moment here to commend the  
Governor's appointment of Bob Martinez to become Director of the  
Department of Economic Opportunity.

I have worked closely with Bob in the past in joint  
efforts to provide essential energy utility services to those  
facing poverty. In my opinion, he's done an excellent job, and  
I urge the Rules Committee to recommend that he be confirmed.

CHAIRMAN ROBERTI: Mr. Martinez.

MR. MARTINEZ: Thank you, Mr. Chairman and Members,  
for the courtesy. I appreciate that, in recognition of the fact  
that a number of people have expressed an interest in testifying  
and have come from some distance.

Basically, I would just like to say that I have  
served, as the Senator has noted, Senator Rosenthal has noted, I  
have previously served in this capacity. I served at a time  
when there was a lot of instability in this Department, and  
there was a lot of concern: concern by the Legislature, by the



1 public at large, by the media, and by control agencies.

2 We worked very hard to reinstitute stability and an  
3 access and a credibility, not only to the public at large, but  
4 to the community of low-income citizens in California that we  
5 serve.

6 That is the reason that I served initially, and that  
7 is the reason that I accepted the reappointment, because there  
8 were concerns that were expressed to me by the Governor about  
9 things that were going on in the Department that I felt I had  
10 the capacity to address once again.

11 When I took over the Department in September of last  
12 year, we had a number of issues to deal with immediately, not  
13 the least of which was concern by the Controller's Office, the  
14 State Controller's Office, about the fiscal integrity of the  
15 Department. So much so that they indicated to me in no  
16 uncertain terms, through a formal audit finding, that the  
17 ability of the Controller to assure that warrants should be  
18 issued to the network of community agencies could not be  
19 maintained because of fiscal concerns that the Controller had,  
20 not the least of which was that there was no audit unit in the  
21 Department. An audit unit is mandated under the assurances that  
22 we give to the federal government in order to receive over \$100  
23 million of block grant funds.

24 We immediately began to address these issues. We  
25 started to move people in to that accounting and budget function  
26 that the Department of Finance felt comfortable with, that the  
27 Controller's Office could feel was responsive. Eight days after  
28





1 I was sworn in, I was able to identify \$2.3 million of local  
2 assistance funds that were carry-over funds that, had I not  
3 encumbered on that eighth day, on the ninth day would have  
4 reverted to the federal government.

5         Those are the kinds of things that were facing us.  
6 In addition, the Department of Personnel Administration and the  
7 State Personnel Board indicated that they had a lot of concerns  
8 about personnel transactions that had occurred, and so we began  
9 to deal with those things. We reorganized the Department in a  
10 way that was asked for us to be reorganized by DPA. And so we  
11 preceded, keeping in mind that the most important thing is to  
12 create a sense of stability for the agencies, the  
13 constituencies, that we serve, and to create a sense of equity  
14 and fairness in the distribution of monies.

15         We began to meet extensively with the associations:  
16 Cal/Neva, representing the community services block grant  
17 agencies; La Cooperativa, representing the migrant seasonal  
18 farmworker agencies; Native American Indians were represented by  
19 three eligible entities throughout the State of California; and  
20 we also met with weatherization associations, in Southern  
21 California represented by the Association of Southern California  
22 Energy Providers, in Northern California represented by the  
23 Association of Rural Energy Providers, as well as an association  
24 in the Bay Area represented by the Bay Area Poverty Resource  
25 Council of which Bill Parker is the President.

26         In any case, I believe that we have moved in the  
27 direction that is most opportune in order to provide assistance  
28





1 to people in need, both in terms of community services and in  
2 terms of energy assistance, so much so that we have been able to  
3 secure funds from the Department of Housing and Community  
4 Development that were not exactly moving forthright into the  
5 communities to the tune of \$4.3 million that are going to be  
6 linked with our weatherization monies to provide rehab., so that  
7 more low-income homes can receive the benefit that energy  
8 weatherization is meant to, to provide assistance to those  
9 people most adversely impacted by the oil overcharge situation  
10 of a few years ago.

11 We have an era of diminishing resources, and I'm  
12 doing my best in working with the Public Utilities Commission to  
13 leverage federal funds with nonfederal resources in an effort to  
14 gain more revenue for those that are most in need.

15 I believe that we've created a viable entity in the  
16 Department of Economic Opportunity. I think that we have a  
17 community that feels that we're working in the right direction.  
18 And I believe that I stand on my record in that regard.

19 I've just recently been able to secure a very  
20 competent individual by the name of Carmen Ochoa, who comes to  
21 us as a loaned executive, who, hopefully and in fact has every  
22 confidence on my part that we'll deal with equal employment  
23 opportunity issues that have arisen. My door remains open at  
24 all times. I'm willing to speak and deal with anyone on any  
25 issue. And Carmen will reiterate that. She has my full  
26 confidence and support, and I've delegated her that authority,  
27 and I believe that we're moving in the right direction.  
28



1 And I thank you for this opportunity. Any questions?

2 Senator, there are a number of witnesses that have  
3 come from out of town.

4 CHAIRMAN ROBERTI: Yes, I have noted.

5 We might do this a little bit differently. I think  
6 I'm going to see what the opposition has to say before I take  
7 your support.

8 Is there opposition in the audience? How many are  
9 here opposed?

10 Are you here representing all of them?

11 FROM THE AUDIENCE: I'm representing CAFE and BASS,  
12 and that may be all of them.

13 CHAIRMAN ROBERTI: Then why don't you come forward.

14 This doesn't mean that I don't want to hear from the  
15 proponent witnesses.

16 MR. ALCALA: I've come here today to ask the  
17 Committee to postpone the confirmation of Robert Martinez.

18 Carlos Alcala, A-l-c-a-l-a.

19 With me is Mr. John Lemmons, a 30-plus year former  
20 management auditor with the state. I also have Paul Bocanegra,  
21 the President of the local CAFE, and Art Jordan, from the Black  
22 Advocates of State Service have asked me to represent their  
23 interests.

24 It gives me -- I have great pain coming before any  
25 committee to oppose the confirmation of a Mexican-American,  
26 because I think that we do not have enough Mexican-Americans in  
27 positions in state government, in meaningful positions such as  
28



1 directorships.

2 And at this point, I don't want you to misinterpret  
3 what I'm saying, to say that I'm totally opposed to him ever  
4 being confirmed. I'm saying that at this moment, from what  
5 we've learned, from what we've been able to do, we request a  
6 postponement of the confirmation.

7 I have requested that Mr. John Lemmons prepare -- and  
8 I asked him to prepare an independent investigative report of  
9 the complaints of discrimination that have occurred at DEO, and  
10 he has prepared a report. And he gave it to me this morning so  
11 that I could see if I was doing the right thing in even being  
12 here.

13 In each case, for Black and Mexican-American  
14 employees, in each of six cases that he preliminarily  
15 investigated, he confirmed what we feared, and that is that  
16 there was a prima facie case of discrimination occurring with  
17 regard to these employees.

18 With regard to management changes that recently  
19 occurred in the Department, sometimes there's a need for change.  
20 But I question change when 15 out of 27 minorities end up on the  
21 short end of the stick.

22 The reason that we come to committees like this is  
23 that we have people like you, Senator Roberti, and Senator  
24 Mello, and Senator Petris, and the rest of the Senators that are  
25 with us, it's important for us to know that there is a system  
26 that works, where we can come forward, where charges can be  
27 made. Where we know that our -- that the allegations that are  
28







1 made are taken seriously; that they are investigated, and that  
2 the chips will fall where they may.

3 If it turns out that none of this is Robert  
4 Martinez's fault, then I'll be the first one back in line before  
5 this Committee, saying, "Vote for the man."

6 But if there's substance to what the Chicano  
7 employees and the Black employees in state government are  
8 telling you, and member, they don't come often before this  
9 Committee. How often have you seen them come to oppose anybody?

10 SENATOR PETRIS: Every committee, every meeting, we  
11 have them. Every meeting we have opposition almost without  
12 exception. And frankly, I'm getting a little impatient at  
13 trying those cases before this forum.

14 I've been a strong supporter of upholding our anti-  
15 discrimination statutes.

16 I'd like to ask if there are cases pending? Are  
17 these six cases now pending before proper remedial tribunals?

18 MR. ALCALA: Fifteen now.

19 SENATOR PETRIS: Now why are you asking us to try  
20 these cases?

21 MR. ALCALA: Because, Senator, the people have  
22 elected you to stand up as their voice to put people in  
23 government that they can have faith in. And for that reason, I  
24 feel I can come to you, Senator Petris, and ask you to do that,  
25 because you are --

26 SENATOR PETRIS: I understand your attorneys have  
27 advised you not to do this.  
28



1 MR. ALCALA: I am an attorney. Nobody advised me not  
2 to do this.

3 SENATOR PETRIS: Well, the group. The group has been  
4 advised not to do this at this time. You're going to be wearing  
5 out your welcome if you keep this up.

6 And I'm the strongest supporter of your groups on  
7 this Committee, bar none.

8 MR. ALCALA: Senator Petris --

9 SENATOR PETRIS: I'm just weary of going into these  
10 cases over and over again that are pending in some other agency.

11 Now, if they weren't pending, and you got a pattern  
12 of discrimination that hasn't reached that point, fine. We can  
13 go into it. We've done it in other kinds of situations. We've  
14 done it in the prisons.

15 The prison system stinks. And one of the reasons it  
16 stinks is the kinds of complaints you're making. And some of  
17 those complaints have been against Latino administrators, just  
18 as in this case, but we still look into them.

19 Do you see what I mean?

20 MR. ALCALA: I appreciate that.

21 SENATOR PETRIS: So, you know, I guess what I'm  
22 asking you is, are you asking us to go into these 15 cases, or  
23 are you asking us to make a judgment based on the investigation  
24 of your counsel or consultant that establishes enough of a  
25 pattern for us to reject the nomination or put it over?

26 MR. ALCALA: I think what --

27 SENATOR PETRIS: What is it you're asking?  
28



1 MR. ALCALA: I think what I'm asking you to do is to  
2 postpone the confirmation to allow the system to work.

3 There are investigative procedures. There are other  
4 forums. And there --

5 SENATOR PETRIS: How much time?

6 MR. ALCALA: -- will be investigations.

7 SENATOR PETRIS: How much time do you think is  
8 necessary?

9 MR. ALCALA: Two, three months.

10 SENATOR PETRIS: Let's see how that affects  
11 Mr. Martinez.

12 When is his deadline?

13 MS. MICHEL: September.

14 MR. MARTINEZ: September.

15 SENATOR PETRIS: September? After we leave?

16 Well, we could do it before we leave, I guess.

17 That's another problem. We run past the deadline,  
18 then he's out for no established reason. Nobody's acted on it.

19 I'm trying to be fair to Mr. Martinez as well.

20 MR. ALCALA: And I appreciate that it's --

21 MR. MARTINEZ: If I might?

22 CHAIRMAN ROBERTI: Mr. Martinez.

23 MR. MARTINEZ: Mr. Chairman, with all due  
24 recognition of the attorney here, I -- I have not been  
25 approached by the individuals that are the complainants. The  
26 first I knew that there was an EEOC complaint filed was when it  
27 was made available to me because it was presented to Rules.  
28





1 Up until this Monday, I had not seen a copy of these  
2 allegations. They had not been shared with me, nor had any of  
3 the individuals come forward to me to discuss their individual  
4 concerns.

5 In the one instance wherein one of the particular  
6 complainants came forward to me as a result of a letter of  
7 reprimand that was put into her file by her immediate  
8 supervisor, she came to me with her representation from CSEA.  
9 We met. We discussed the issues, and the resolution was, I  
10 removed the letter of reprimand.

11 I can deal with the issues on an individual basis,  
12 but when they are not presented to me, and in fact, are now part  
13 of a federal EEOC process, that process will ensue. It'll take  
14 whatever time it takes. It could take three months; it could  
15 take a year.

16 But apparently that process has begun, and that's  
17 fine. I have no problem with that. I have no predisposition  
18 about that. Let the chips fall where they may.

19 I only ask, and as I told Paul yesterday when I had  
20 an opportunity to meet with him finally, I am willing to meet  
21 and discuss with anyone any issue. I brought Carmen Ochoa on  
22 board expressly for the reason of having someone who has the  
23 expertise and the skills to provide our agency, our top  
24 management, because she is a part of top management, the kinds  
25 of -- the kinds of resources, and the kinds of sensitivity  
26 that's necessary to have to set up the kinds of EEOC committees  
27 that are necessary in order to clearly convey a willingness to  
28



1 meet and discuss with anyone any issue they feel has adversely  
2 impacted their status.

3 I'm willing to do that. I make that commitment now.  
4 I would make that commitment with anyone at any time whether I'm  
5 confirmed or not confirmed. As long as I am Director of this  
6 Department, I make that commitment.

7 To postpone this thing in order to let an EEOC  
8 process to on is, in effect, saying that I don't know what I'm  
9 doing; I'm not capable of acting on my own, and I don't think  
10 that's appropriate.

11 MR. ALCALA: Well, what I was going to say is,  
12 hopefully, if what Mr. Martinez is saying is that he intends to  
13 do something about the things that are coming to light, then  
14 it's not just the EEOC. It's something that he's proposing to  
15 do, and something that can be evaluated.

16 But you just don't have 60 percent of the -- all the  
17 minorities in the Department affected in one fell swoop --

18 MR. MARTINEZ: Excuse me, I don't think --

19 MR. ALCALA: -- moments after a Director comes in --

20 SENATOR PETRIS: I guess it wasn't very serious,  
21 because nobody complained to him.

22 MR. MARTINEZ: I've got 99 employees that have  
23 signed --

24 FROM THE AUDIENCE: [Inaudible.]

25 CHAIRMAN ROBERTI: Everybody will have a chance.

26 SENATOR PETRIS: He says that none of the people here  
27 to testify ever went to him and complained.  
28



1           If that's true, then you don't have a very strong  
2 position, and that's what I don't like. I don't like saving  
3 that for this forum.  
4

5           MR. ALCALA: Senator --

6           SENATOR PETRIS: Going through the process, and  
7 you're totally frustrated by some unwarranted and unreasonable  
8 arbitrary action, fine. I personally would like to hear it, and  
9 I think the Committee Members would, too.

10          MR. ALCALA: Senator, with all due respect, four of  
11 them have already filed for State Personnel Board hearing. Six  
12 of them had complaints accepted this week by the federal EEOC;  
13 six more have had complaints referred to the State DFEH.

14          And if you're telling me that, no, they didn't go  
15 speak to Martinez as the first line for relief because they felt  
16 that he may be the one responsible for their plight, you're  
17 right. They didn't go to him as the first line.

18          They thought that they might get relief in the  
19 administrative agencies that the Legislature has created, and  
20 said, these agencies are out there to investigate wrongdoing, if  
21 it exists, and to resolve it, and to do things of this nature.

22          Now, his position -- our position with this is,  
23 that's what they're doing. And there's time for a procedure to  
24 work. They're doing that. And in the interim, we're here  
25 because the confirmation of this man is going forward now. And  
26 these complaints have not been fully investigated.

27          You don't know what the results are; neither does he.

28          What we do know is that you have this many people







1 with these big a problems [sic], and it's an enormous part of  
2 this Department. And it is a very large segment of that -- of  
3 the minority population of that community -- of that Department.

4 And there has to be a feeling somewhere that -- that  
5 we have government that's responsive, that there isn't just a  
6 frustration that we complain, we tell them what's wrong,  
7 government doesn't really care, because they have other --  
8 because they have other agendas.

9 SENATOR PETRIS: All right, let me go back to the  
10 other point.

11 It's a matter of basic fairness. It seems to me that  
12 most people, when they're abused, will make a compliant to the  
13 abuser.

14 Are you saying that either it has been done without  
15 any attention being paid, or it hasn't been done because of a  
16 feeling of frustration, it wouldn't do any good anyway?

17 When a man says, "Look, if they had come to me, I  
18 would have talked to them," I need to know whether they made any  
19 effort to go to him, and if not, why not. I don't think that's  
20 an unfair question.

21 MR. ALCALA: I don't think it's unfair at all,  
22 either, Senator. Don't misinterpret me. I'm not criticizing  
23 you for saying that.

24 What I'm telling you is that minority people aren't  
25 necessarily going to have the greatest confidence in the person  
26 they identify as the source of the problem. It doesn't work  
27 that way.  
28



1           You don't go to the person that you think is causing  
2 the problem and say, "Listen, we're here. You've got the power  
3 to fire us, and we're coming in here before you." That's not  
4 the way it's going to happen.

5           MR. MARTINEZ: Is the inference there that I'm not a  
6 minority? Is that what you said?

7           MR. ALCALA: No. There's an inference that you're  
8 the source of the problem.

9           SENATOR PETRIS: Well, I hope there's more than an  
10 inference in the testimony, you know. Otherwise, we're wasting  
11 our time.

12           MR. ALCALA: What I can give you is -- what I have is  
13 the independent investigative report. I had a person with 30-40  
14 years in state government; 20-some of them he spent as a  
15 management auditor for the Department of Finance.

16           And I said, "Go, conduct an investigation, management  
17 audit, on this issue and tell me. If there's nothing there, say  
18 it."

19           He came back with a four-page preliminary  
20 investigative report saying there's a substance to everything  
21 these people are saying.

22           SENATOR PETRIS: Attributed --

23           MR. ALCALA: I've got it here.

24           SENATOR PETRIS: And it's all attributed to  
25 Mr. Martinez?

26           MR. ALCALA: He's attributed it to Mr. Martinez, but  
27 you could ask him for himself [sic]. This is Mr. Lemmons that  
28



1 prepared the preliminary investigative report.

2 By the way, Senator, there will be other people  
3 speaking after me for which I have the greatest respect. Some  
4 of them coming from the American G.I. Forum, with whom years ago  
5 I had a chance to work with Hector Garcia, and even Bill Garcia,  
6 who's here today. These are people I have the highest respect  
7 for. Some of them are going to be telling you that Robert  
8 Martinez ought to be confirmed today.

9 And what I'm telling you is that we have a different  
10 perspective, because I'm here representing the employees that  
11 are in state government in this Department. We're not --

12 SENATOR PETRIS: That's fine. I don't have any  
13 quarrel with that.

14 But I just didn't want to be trying 15 cases today.

15 MR. ALCALA: We don't expect you to try 15 cases,  
16 Senator.

17 SENATOR PETRIS: Okay, thank you.

18 CHAIRMAN ROBERTI: Next witness.

19 MR. LEMMONS: I've been asked by Carlos Alcala,  
20 attorney at law, to conduct an independent investigation of the  
21 complaints by employees in the Department of Economic  
22 Opportunity to determine if a prima facie case of racial  
23 discrimination could be established under the Civil Rights Act  
24 of 1964.

25 I interviewed ten employees who complained of  
26 discriminatory treatment from the Robert Martinez  
27 administration. During these interviews, it became obvious that  
28





1 these employees feel their workplace was a hostile environment  
2 of political conflicts and turmoil. From those interviews, a  
3 common story evolved which I believe is essential to an  
4 understanding of these complaints. So, I'd like to take several  
5 minutes to provide background information that was given to me  
6 by some Department employees.

7 In the backgrounds, Robert Martinez, an Hispanic, was  
8 first appointed Director of DEO on October, '84, served until  
9 May, '88, and during that period when the Department was not  
10 civil service, he hired four white women to serve as his  
11 management team. This team was led by Ms. Toni Caffrey Curtis,  
12 whose brother, David Curtis -- David Caffrey, worked in the  
13 Governor's Cabinet and had responsibility for overseeing the  
14 Department.

15 Mr. Martinez was succeeded as Director by Theresa  
16 Alvillar Speake in August, 1988. Some employees said they  
17 observed a telephone campaign being conducted against Theresa  
18 Alvillar Speake's appointment by staff members.

19 Theresa as Director gained a reputation for being  
20 supportive of equal employment opportunities. The Department  
21 employees were becoming more assertive about -- assertive after  
22 gaining civil service status in 1986. Theresa Alvillar Speake  
23 apparently made some decisions that were unpopular with the four  
24 white women managers, which diminished their influence.

25 So, when Mr. Martinez again became available for  
26 reappointment, some employees believe the four women, white  
27 women managers, began a campaign within the Governor's Office to  
28



1 get Theresa Alvillar Speake's appointment terminated, and  
2 Mr. Martinez's reappointment as Director.

3 There were a number of issues of an underground  
4 newsletter, "The Last Gasp", circulated through the Department  
5 on a periodic basis. The newsletters politically satirized the  
6 Department and was critical of Theresa's administration.

7 Theresa's appointment was terminated on September,  
8 1991, and Robert Martinez was appointed on September 20th, 1992  
9 [sic]. On his arrival at the office the first day, Robert  
10 Martinez was greeted by some of his former staff members wearing  
11 T-shirts inscribed with --

12 MR. MARTINEZ: Are you kidding? Are you going to  
13 pull out the T-shirt?

14 This is great. I want you to take note of a T-shirt  
15 that appeared on that day.

16 MR. LEMMONS: "Ding Dong The Wicked Witch Is Gone".

17 MR. MARTINEZ: That's great.

18 MR. LEMMONS: These shirts were being sold in the  
19 office and worn by employees who wanted to be identified as  
20 Robert Martinez supporters.

21 Some employees were of the opinion that the T-shirt  
22 resulted in a further division among the staff, believing that  
23 such a display was discriminatory and unprofessional. Other  
24 employees were quick to note that there were no further "Last  
25 Gasp" newsletters. Thus began Robert Martinez's second  
26 appointment as Director.

27 Within five days of being appointed, Mr. Martinez  
28





1 began implementing a reorganization that some employees believe  
2 has systematically removed minority employees from positions of  
3 influence and replaced them with white employees.

4 Employees contend that at the time Mr. Martinez was  
5 appointed, the Department had approximately 105 employees, 30 of  
6 which were minority employees above the level of office  
7 assistant. At the present time, at least 16 of those 30  
8 minority employees have been adversely affected by Robert  
9 Martinez's reorganization.

10 MR. MARTINEZ: That is not correct, but I guess I'll  
11 speak to that later.

12 MR. LEMMONS: The gravity of the situation is the  
13 size of the Department. This represents more than 50 percent of  
14 the minority employees adversely affected with a very small  
15 percentage of white workers similarly affected.

16 All six of the Department's employees who have filed  
17 complaints with the U.S. Equal Employment Opportunity Commission  
18 have had their complaints accepted. It is my understanding that  
19 there are more employees who have initiated -- have intentions  
20 of filing with that agency. Also, four employees have asked for  
21 State Personnel Board hearings regarding the cancellation of  
22 their promotions.

23 A review of the five cases -- I think it's six cases  
24 -- that were filed, I applied evaluation criteria and reached a  
25 conclusion. The first category is -- there were three employees  
26 who complained of being removed from their positions with the  
27 Department.  
28





1           The criteria for determining a prima facie case in  
2 these situations are: A, was the employee in a protected class;  
3 B, was the employee qualified for the job; C, was the employee  
4 doing the job satisfactorily; D, was adverse action taken.

5           MR. ALCALA: There are in this category, without  
6 going through and retrying, as Senator Petris asked, the  
7 conclusion was reached that the employees in this category had  
8 established a prima facie case.

9           In the second category were people that complained  
10 about disparate treatment. One of the people that complained  
11 about disparate treatment complained about this T-shirt.

12           I realize that Mr. Martinez doesn't consider this a  
13 serious thing. He's shown that now. But there were employees  
14 that complained to him that they saw it as rude, unprofessional,  
15 and discriminatory against minority employees.

16           MR. MARTINEZ: One employee.

17           MR. ALCALA: This employee suffered adverse action;  
18 had to seek relief; has been harassed ever since the time that  
19 she complained about this T-shirt. She has not led the same  
20 life.

21           In the last category, we had Black employees who were  
22 demoted or were denied promotions. With regard to the Black  
23 employees that were denied promotions or demoted, the same  
24 criteria was applied as required by law. In each case, the  
25 consultant found that they established a prima facie case in  
26 their charges.

27           Now, this is not a final report. This is  
28



1 preliminary. It's a result of ten -- ten people that have been  
2 questioned. It's a result of one investigator who has been with  
3 state government for 30 years, who this very state used to do --  
4 used to use to conduct management audits on behalf of the state.  
5 He did it for 30 years. He did it for your Department of  
6 Finance.

7  
8 He's come and said, "Look, I applied your rules; I  
9 applied your criteria. I went and looked at this Department,  
10 and there's a problem, at least from what I can tell."

11 Based on this, I would ask you to postpone the  
12 confirmation. Allow this to perhaps be developed in greater  
13 detail. Don't try it here. That's not what I'm asking,  
14 Senator, but allow the system to work. Maybe these minority  
15 employees are all wrong. Maybe this man has nothing to do with  
16 it.

17 If he has nothing to do with it, I'll be the first  
18 one here to support getting another minority into state  
19 government.

20 But he is at the source of the problem, then he  
21 shouldn't be confirmed. And that's all we're asking.

22 MR. MARTINEZ: That's all?

23 If I might just briefly.

24 CHAIRMAN ROBERTI: Yes, Mr. Martinez.

25 MR. MARTINEZ: I was not aware that the investigator  
26 was in, obviously.

27 If I might ask, did you talk to anyone other than  
28 these ten employees? Did you talk to anyone in managerial



1 positions?

2 MR. LEMMONS: Yes, but I didn't conduct any  
3 investigation in your agency.

4 MR. MARTINEZ: Oh, I see.

5 Again, I guess what I'd like to do is to say that  
6 maybe these things are true, and maybe they are not true. The  
7 only way we're going to find out, apparently, is not through any  
8 sort of resolution that I might have had an opportunity to  
9 offer, but apparently it's going to be found out through some  
10 sort of formal process, whether it's through the FEH or the  
11 EEOC, because apparently these things have moved through.

12 The State Personnel Board has been involved already  
13 in a number of these things, as has the Department of Personnel  
14 Administration, because in all cases of demotion that have been  
15 referenced up to now, it is the Department of Personnel  
16 Administration that has ordered the demotion on the basis --  
17 excuse me, I'm speaking -- on the basis of their findings of  
18 lack of qualifications for those positions.

19 Now, again, this is not the forum to deal with these  
20 things. I come here in order to be assessed in terms of my  
21 worthiness to carry out the responsibilities of the Department.  
22 Part of that is, in fact, to provide a forum for resolution  
23 seeking.

24 And I will reiterate that I have indicated and I will  
25 continue to indicate that I am willing to meet and discuss this  
26 with anyone. I've brought on board -- unfortunately, she was  
27 not able to come on board until just recently, in fact Monday --  
28







1 an individual who will be dealing directly with these things.  
2 If you want to talk to her in terms of what she intends to do,  
3 feel free to talk to Carmen.  
4

5 But again, there are a number of people that are here  
6 that want to talk about the Department as it existed prior to my  
7 being here, and the Department as it exists now, in terms of  
8 providing services to the constituency which it serves.

9 We're dealing with diminishing federal resources. We  
10 don't have any general fund. We're trying to provide a  
11 mechanism by which these resources continue to be available.

12 I am not in any way minimizing the concerns of  
13 counsel representing these individuals. They have resource.  
14 They have access. They have recourse. And I think that process  
15 should be allowed to ensue, and I would hope that you take their  
16 account and their presentation in balance with what apparently a  
17 number of other people, including 99 employees of my agency that  
18 have signed petitions saying that they support my confirmation.

19 Apparently there's someone in the back who's making  
20 hissing noises, I guess.

21 CHAIRMAN ROBERTI: Somebody was, but not right now.

22 MR. MARTINEZ: So, I defer to the Committee.

23 CHAIRMAN ROBERTI: I think there's one other person  
24 in opposition. Is there somebody else who wants to speak in  
25 opposition?

26 Before we get to the proponents, I appreciate the  
27 seriousness with which the opponents take this matter, but it's  
28 a pending personnel case. That is our problem.



1           And both for economy of time, in all appointments  
2 that we engage in, and propriety when there's something that's  
3 pending, it's very difficult for us to get into pending cases.

4           Senator Petris made a point that is very important.  
5 If there is a pattern of adjudicated, litigated, whatever the  
6 word, cases, or complaints that have reached some point of  
7 adjudication or frustration, then we feel it's within our  
8 purview in the confirmation process to acct.

9           But this is the confirmation process, and we have to  
10 engage in some kind of restraint ourselves, respecting the  
11 division of powers as between the Governor and the Legislature.  
12 And I just don't know if I want to get into a current personnel  
13 case where a pattern has not necessarily been established.

14           And that doesn't mean I am dismissing the seriousness  
15 of this issue. We have dealt with these issues quite seriously  
16 when we're talking about issues of minority employment. We are  
17 very serious about it when it comes to ourselves

18           The other point is just a practical question of time.  
19 If we heard every personnel case, there's absolutely nothing  
20 else that we could ever possibly do. I don't know if I want to  
21 establish that precedence. Hearing from Senator Petris, he  
22 doesn't, either.

23           If we had something other than what is pending, I'd  
24 be interested I hearing it. But it's very difficult to act on  
25 something that's pending on a serious matter, on a serious  
26 matter. I don't want to --

27           MR. MARTINEZ: I fully accept the seriousness of  
28



1 these matters. In fact, because I had an opportunity to finally  
2 take a look at these complaints, there are two complaints  
3 specifically that I've identified that can be, if not in part,  
4 in total, addressed by me. I have an opportunity to do  
5 something about them.

6 They relate to the status of limited terms that has  
7 been designated as a result of the reorganization that I had to  
8 do. Two managerial employees were put into a status that the  
9 Department of Personnel Administration chose to call limited  
10 term.

11 I have since written to the Department of Personnel  
12 Administration, and I intend to appeal all the way to David  
13 Tirapelle about that status, because in the past, whenever we  
14 have reached a situation where there is -- the staffing has  
15 changed such that there is a position, managerial position  
16 that's been jeopardized, we have been given an exemption that  
17 allows that individual to not -- to be held harmless and put  
18 into a red circle situation. And I intend to do that in this  
19 case to the fullest extent, and I've so communicated to the  
20 individuals.

21 And I think -- and those are the kinds of things that  
22 we can do. That we can do together.

23 And again, I have been involved in state service for  
24 many, many years in a number of capacities. And I guess I'm  
25 very much bothered by a inference that, in some way, I am a  
26 racist, that I'm prejudiced, that I have some sort of a  
27 predisposition to people that are part of my culture that I grew  
28







1 up with, in East Oakland, and I resent it, and I -- but it  
2 doesn't mean that in any way I am going to adversely impact  
3 anyone who wishes to seek their legal recourse.  
4

5 All I am saying is that I'm willing to sit and meet  
6 and discuss any situation, because all things are possible when  
7 there's an opportunity for discussing and reconciliation.

8 CHAIRMAN ROBERTI: Any other observations?

9 Is there anyone else in opposition? Yes, please come  
10 forward.

11 MR. ALCALA: There's also Art Jordan from BASS.

12 CHAIRMAN ROBERTI: Let the record indicate that  
13 Mr. Jordan of BASS did want to come testify, but he is not here  
14 at the moment.

15 Yes, please indicate your name.

16 MS. CARTER: My name is Anita Carter. I am a  
17 resident of Sutter County.

18 I guess I'm one of the individuals behind the mask,  
19 and I feel as though if I have something to say, I should step  
20 forward and look you straight in the eyes, and you look me  
21 straight in the eyes also, and look the Director straight in the  
22 eye and say what I have to say.

23 I would like to direct this comment to Senator  
24 Petris, who talked about being -- there was being a process to  
25 go through.

26 I would like you to know that I followed that  
27 process. And what happened was, when I followed that process, I  
28 got -- I received retaliation for it. I got a letter. I filed



1 a grievance with the Department.

2 SENATOR PETRIS: Can you be more specific on the  
3 process?

4 MS. CARTER: Okay.

5 I filed a grievance with the person -- with the  
6 Department of Personnel within our office, okay. And the  
7 grievance was denied, and then I asked for a process by which to  
8 go forward with that grievance. I was told that the Department  
9 of DPA would be the next step.

10 But within the interim of me doing this and gathering  
11 information, I got a letter of warning that basically said I was  
12 crazy. So --

13 SENATOR PETRIS: Who sent you the letter?

14 MS. CARTER: My supervisor.

15 SENATOR PETRIS: Who's that?

16 MS. CARTER: Maxine Duriso.

17 SENATOR PETRIS: Is she here today?

18 MS. CARTER: Yes, she is.

19 SENATOR PETRIS: We'll ask her some questions about  
20 it.

21 Then what was the next step?

22 MS. CARTER: Well, I think my --

23 SENATOR PETRIS: Do you have that letter with you?

24 MS. CARTER: No, we didn't bring it. I'm sorry.

25 SENATOR PETRIS: What was the next step?

26 MS. CARTER: I guess what I'm saying, I responded to  
27 her in that letter. I responded back with a response, okay.  
28



1 And I was told within the letter that that would go into my  
2 personnel file for six months, okay.

3 A lot of things contained in that letter were of  
4 meetings and meetings that never even occurred, statements that  
5 she said she made that were never made. There was no  
6 documentation that was ever given to me except -- with the  
7 exception of that letter, you know.

8 I received a probe where she did make some comments,  
9 and we did talk about that, and I certainly acknowledge that,  
10 okay.

11 But I guess what I'm trying to answer, the point  
12 where the Director said that no one has come forward, and I want  
13 him to know that -- yes, I want you to know that if I start a  
14 grievance, and somebody steps on my neck, I'm not going to come  
15 to you with the next grievance. So, I want you to know that.

16 SENATOR PETRIS: Are there any other steps higher up  
17 that you were able to take, or did that end it?

18 MS. CARTER: This -- no, I'm not through -- I'm not  
19 through with the official grievance that I filed with personnel.  
20 I'm in the process of filing with DPA and I intend to do that.

21 SENATOR PETRIS: What you're saying is, you tried  
22 within the shop, and it didn't work.

23 MS. CARTER: It didn't work.

24 SENATOR PETRIS: And your rejection, the first filing  
25 of the grievance it was rejected.

26 Were the reasons spelled out for the rejection?

27 MS. CARTER: Well, they just said that the time limit  
28





1 of my complaint had passed.

2           SENATOR PETRIS: So that's not a rejection on the  
3 merits; is it?

4           MS. CARTER: Well, I don't know, because the  
5 personnel officer said that the Department would never agree --  
6 would never find for me in my favor, you know. So, I was  
7 basically told up front that I could go ahead and file the  
8 grievance, but it really wasn't going to do me any good.

9           SENATOR PETRIS: Was that because the time limit had  
10 expired?

11           MS. CARTER: Well, she didn't really say, because  
12 they hadn't done the investigation yet. You have to do an  
13 investigation.

14           But as far as I'm concerned, in what I am -- I am  
15 actually grieving, and I won't say what that point is, is that I  
16 am -- the point that they made, and the point that I'm grieving  
17 are two different things, and so therefore I will pursue that.

18           As far as filing the complaint with EEOC, I didn't  
19 really feel as though that I would have an empathetic ear from  
20 the Director. I don't have one -- seem to have one from -- I  
21 can talk -- I thought I could talk to my supervisor, but  
22 evidently I don't feel comfortable going to her supervisor.

23           And I just kind of feel as though there is a  
24 conspiracy within the office. I am a Black female, as you can  
25 see. And I've worked for this Department since December of  
26 1983. I have repeatedly been passed over for promotions while  
27 I've watched everyone else on that list be promoted, and bottom  
28



1 line being, all of a sudden, there's something wrong with me  
2 behavior.

3 As my supervisor is well aware, for the past year,  
4 I've had Grave's Disease, and I've been going through that. And  
5 I've been going up and down.

6 So, instead of showing me a little empathy, they  
7 kind of kicked me in the butt. And that's the way I feel about  
8 it.

9 Thank you.

10 SENATOR PETRIS: You mentioned retaliation. Was  
11 there any in your case? Was there any retaliation?

12 MS. CARTER: With my grievance -- filing the  
13 grievance with DPA -- with the Department?

14 SENATOR PETRIS: Well, because of the fact that you  
15 did file a grievance, did --

16 MS. CARTER: Yes! I got the letter. I filed the  
17 grievance, sir, on March the --

18 SENATOR PETRIS: That doesn't seem -- retaliation  
19 normally means they really come down on you hard. They might  
20 demote you. They might --

21 MS. CARTER: You haven't read this letter, really.

22 SENATOR PETRIS: No, I haven't read this letter, but  
23 I'm asking you about it.

24 MS. CARTER: It -- the letter -- I don't sleep at  
25 night. I think about it all the time.

26 SENATOR PETRIS: You don't have it with you?

27 MS. CARTER: No. I wish -- I really wish I did, but  
28



1 I -- I hadn't really planned on saying anything. Okay, I really  
2 hadn't planned on saying anything, but I -- I just feel as  
3 though that if I have something to say, then I should say it for  
4 me.

5 And I want you to know that this whole thing has  
6 really left me upset. I feel as though I am a victim. I feel  
7 as though my character has been defamed. I just don't know what  
8 to do.

9 SENATOR PETRIS: Do you think this is all due to the  
10 policies of Mr. Martinez?

11 MS. CARTER: The Director, whether he knows of what  
12 is going on or not, whether he's aware of that, the buck stops  
13 there.

14 SENATOR PETRIS: I suppose you probably can't tell  
15 for sure whether that information you sent on ever actually  
16 reached him?

17 MS. CARTER: I don't know if he ever saw that.

18 Did you ever see that letter that was prepared on me?

19 MR. MARTINEZ: Again, I remember looking at a file  
20 that indicated the -- well, several instances having to do with  
21 corrective action. And I saw that with a cover letter from --  
22 from the supervisor.

23 But I don't know if I've seen the entire file.

24 Again, I would have seen the entire file if she would  
25 have come forward and asked to see me. For that matter --

26 SENATOR PETRIS: Well, I think I can understand --

27 MR. MARTINEZ: That's fine.  
28





1           SENATOR PETRIS: -- can understand her position. She  
2 starts a grievance, and then she really gets dumped on with this  
3 horrible letter. She has confidence in her immediate  
4 supervisor, but once she gets beyond that level, she gets  
5 nothing but static.

6           I guess if I were in her shoes, I wouldn't be too  
7 eager to come and see the boss, either.

8           Isn't that a fair representation --

9           MS. CARTER: Yes, yes.

10          SENATOR PETRIS: -- of the way you felt about it?

11          MS. CARTER: Yes.

12          I would also like to add that it was a surprise to me  
13 when I got this letter. I thought I had a very good  
14 relationship with my supervisor. She had told me a number of  
15 times that I was going to be promoted and not to worry about it.

16          And bottom line was, I was told, "You have a behavior  
17 problem. I am not going to promote you."

18          SENATOR PETRIS: What is your job classification?

19          MS. CARTER: I'm an SSA, Staff Services Analyst. I  
20 have taken the associate program analyst class exam on three  
21 different occasions. I took it in 1986, 1989 ad 1990.

22          SENATOR PETRIS: And you passed the course?

23          MS. CARTER: Yes, I have always passed it.

24          I guess what really sticks in my craw is that they  
25 went below me on the list and promoted a lady -- a woman with a  
26 score of 70 and a rank of 5. Give me a break! You know?

27          SENATOR PETRIS: That's, I assume, below your scores?  
28



1 MS. CARTER: Yes, and it just isn't fair.

2 SENATOR PETRIS: Thank you.

3 MR. BOCANEGRA: Mr. Petris, you were asking for  
4 people in opposition.

5 My name is Paul Bocanegra, President of CAFE  
6 Sacramento. It's an Hispanic Benevolent Employees Association.

7 You know, this is probably not the proper forum, and  
8 I totally agree, to go into all the specific details. That's  
9 why we provided some background information in regards to the  
10 affidavits.

11 We're not here to try the EEOC complaints, okay.  
12 We're not here to try the State Personnel Board appeals or  
13 Department of Personnel Administration appeals.

14 We're here to talk about in general the environment,  
15 the atmosphere that is existing there that started to occur, to  
16 happen, in less than a week's time form the time that Mr. Bob  
17 Martinez [sic].

18 Now, I want to say that I don't know if Bob could  
19 have accomplished all that within a week's time. I don't know  
20 that we could have talked about a reorganization in less than a  
21 week's time when he was appointed, sworn in, September 20th.

22 So the question that we're asking is for postponement  
23 of this confirmation until we look into who is responsible for  
24 it; who approved it.

25 Now, very briefly, you have this information in your  
26 package that was provided to you. Mr. Buzz Breedlove, with the  
27 Senate Research Planning Committee, I believe -- I'm not  
28



1 familiar with all the stakes which you have available at your  
2 disposal -- but real quickly here, Fernando Vellanoweth, Manager  
3 of Financial Services, a Staff Manager I, was transferred into a  
4 misallocated one-year limited term position and replaced by a  
5 nonminority after being harassed by one of the folks in their  
6 management team.

7           So, I don't want to get into personalities, but  
8 that's a fact. We can't shy away. We can't look away. It's  
9 something that we feel very uncomfortable with.

10           We would not be up here if we didn't feel, before  
11 you, in front of my family, to deal with these.

12           Now, I can go on and on, but I would refer you to  
13 page 11, but just be patient with me on just two more things, if  
14 I may, please. And I know we have a lot of people that need to  
15 go, too.

16           Mr. Russ Salazar, at the time he was our Chief of  
17 Management Services, Staff Manager II. He has his authority and  
18 responsibilities significantly reduced. His position is now in  
19 jeopardy because it's been declared misallocated and changed to  
20 a one-year limited term status.

21           In my particular case, I was the Department's Budget  
22 Officer. In fact, I don't know at this point in time whether I  
23 still am or not. I've been -- I was transferred to a site I'd  
24 like to talk about in a second, and I was replaced by a  
25 nonminority. I've been assigned basically low-level accounting  
26 duties which are clearly not the duties and responsibilities.

27           And I did go through the process, Mr. Petris. I did  
28







1 go through the person that moved me around. I did go to the  
2 person and specifically say, "As long as I do duties and  
3 responsibilities consistent with my classification, you can sign  
4 whatever you want." Okay?

5 And basically, I'm looking at real old work, '83-87,  
6 to close out some contracts that accounting hadn't done, you  
7 know, since '83 in some cases.

8 I will finish, sirs, by just sharing this with you,  
9 so that you know what's going on there. You decide for yourself  
10 if it warrants postponement, okay.

11 I had scheduled surgery, and there was an assistant  
12 assigned to me to finish the Department's budget. There was  
13 about eight hours' worth of work to be done in that budget to  
14 submit to Department of Finance, okay. At the time that I left,  
15 that's what was needed.

16 So, upon returning from surgery, I was informed by  
17 Fernando Vellanoweth, my supervisor prior to surgery, that he  
18 was no longer my supervisor, and I was directed to a particular  
19 person -- and I don't want to mention names. They have an  
20 opportunity to respond, and they will have their day.

21 Anyway, I was directed to a work site that functioned  
22 as a storage area for accounting files. No personal computer,  
23 no calculator, no operational phone, or adequate furniture was  
24 provided. The work site housed a central computer terminal used  
25 by accounting staff and a communal coffee pot where accounting  
26 staff that contributed to a coffee fund, or individuals that  
27 paid 25 cents, could have brewed coffee.  
28



1 I requested of this particular individual, which is  
2 part of the process -- I did not look the other way. I went  
3 forward -- that I have another work site that was vacant with  
4 proper equipment and furniture, but my request was denied.

5 Now, I'm here. I'm speaking loud and clear. And I  
6 made no false allegations, because I cannot make statements and  
7 slander individuals, and I will not do that. And I don't want  
8 individuals to do that to me, either.

9 But I feel that my reputation was damaged. My self-  
10 esteem was lowered. I was openly ridiculed for being kept at  
11 this work site.

12 And I can go on and on, but I will stop there, and  
13 thank you for your patience.

14 SENATOR PETRIS: Let me ask you a question.

15 How long have you been in the Department?

16 MR. BOCANEGRA: I've been in the Department  
17 approximately two-and-a-half years.

18 SENATOR PETRIS: Two-and-a-half?

19 MR. BOCANEGRA: Yeah, it's in my affidavit here.  
20 Hopefully, I believe it was provided. We talked to Sherry. I  
21 believe she's with Mello's office. She's putting together the  
22 packages, or Roberti's, I forget.

23 CHAIRMAN ROBERTI: Senator Mello's office, yes.

24 I hate to say it, but the Democrats are going to be  
25 caucusing.

26 MS. MICHEL: Some of the people who are here have  
27 come from out of town.  
28



1           CHAIRMAN ROBERTI: I don't know what to do. We have  
2 a Democratic caucus to discuss the state budget, which is  
3 important, too.

4           FROM THE AUDIENCE: We could stay here all night if  
5 we have to.

6           MR. MARTINEZ: Mr. Chairman, I would be -- you know,  
7 the confirmation -- my concern is, obviously, everyone needs to  
8 find a resolution.

9           And I am, as I said, you know, there are a number of  
10 things that were raised in regard to the -- to the supposed  
11 investigation and findings. I mean, that's one-sided, fine.

12           The process of the EEOC is going to determine the  
13 full record.

14           We have not had an opportunity to comment on that,  
15 because the EEOC hasn't contacted us yet. Fine. They will  
16 eventually.

17           In the meantime, there are a lot of concerns here. I  
18 am willing to meet and discuss these concerns with anyone, and  
19 I'm willing to report to the Rules Committee, or anyone else,  
20 about --

21           CHAIRMAN ROBERTI: Here is what I guess I would like  
22 to do -- but I know there are a number of people who are here to  
23 want to testify in your support -- is that as long as I feel  
24 that this is still essentially a pending personnel matter, my  
25 inclination is to vote for confirmation.

26           Nevertheless --

27                           [Applause.]  
28





1 CHAIRMAN ROBERTI: Please, please, please don't do  
2 that.

3 Nevertheless, I think we owe it to the people who are  
4 here in opposition more to what they believe is a situation in  
5 your office, rather than you personally, for you to address  
6 their concerns.

7 MR. MARTINEZ: Absolutely.

8 CHAIRMAN ROBERTI: I hope we can do that within the  
9 week. We take a vote up on your confirmation next Wednesday.

10 I would like the people who are here in support to  
11 indicate who they are, the organizations that they represent.

12 If it looks like the confirmation becomes more  
13 difficult than I anticipate, then we'll do everything to make  
14 another hearing to expedite your travel up here, but I don't  
15 think that's going to be necessary.

16 However, I would like Mr. Martinez to meet with the  
17 opposition, because it goes more to the operation of the office  
18 than to you specifically.

19 Now, having said that, could those who are here in  
20 support please come forward and tell us who you are and the  
21 organizations that you represent.

22 Do this in some orderly fashion, if we can.

23 FROM THE AUDIENCE: Are we going to be allowed a  
24 minute to speak?

25 MR. ORTIZ: Just identify ourselves?

26 CHAIRMAN ROBERTI: Yes.

27 SENATOR PETRIS: Mr. Chairman, before we leave, may I  
28



1 ask the supervisor to make a comment on the letter?

2 Are you the one who wrote the letter? Can you stick  
3 around so we can ask you? Thanks.

4 CHAIRMAN ROBERTI: Please come, give your name.

5 MR. ORTIZ: My name is George Ortiz. I'm the  
6 Chairman of the Board of Directors of La Cooperativa Campesina  
7 de California.

8 It's the second-largest service provider for poor  
9 people in the State of California.

10 CHAIRMAN ROBERTI: Thank you.

11 These are in support.

12 MR. JONES: Senator Roberti and Members of the  
13 Committee, my name is Michael Jones. I'm from Proteus,  
14 Incorporated, in -- headquartered in Visalia, California.

15 We represent services to farmworkers and other rural  
16 poor in Fresno, Tulare, Kings, and Kern County.

17 I'm here in support of Bob Martinez. Thank you, sir.

18 MR. GONZALEZ: My name is David Charles Gonzalez.  
19 I'm an officer of the Association of Southern California Energy  
20 Providers, and we took a poll this morning of our 41 members,  
21 and overwhelmingly, 41 of those agencies all in support of  
22 Mr. Robert Martinez as the DEO Director.

23 And I do take offense of thing I have to say to the  
24 Board. I want you to know that not all Hispanics feel like the  
25 ones that came before you feel that way. There's a lot of us  
26 that don't. And first of all, we're Americans before we are  
27 Hispanics.  
28



1 Thank you very much.

2 SENATOR PETRIS: I have a question, excuse me.

3 I didn't catch the name of your organization? Is it  
4 energy companies?

5 MR. GONZALEZ: No, it's the Association of Southern  
6 California Energy Providers.

7 SENATOR PETRIS: Energy providers?

8 MR. GONZALEZ: Yes, it's a coalition of agencies and  
9 vendors who formed an association in Southern California. They  
10 be from San Luis Obispo to the border.

11 SENATOR PETRIS: What is that, electricity, oil?

12 MR. GONZALEZ: No, our members are agencies like  
13 TELACU, MODA VIA, ASSERT, Veterans of Community Service. They  
14 are subcontractors who do weatherizations, and a lot of them are  
15 CAP agencies for low income.

16 And our association, the south, we also allow  
17 vendors. Edison is a member, and so is Southern California Gas  
18 Company.

19 And it was overwhelmingly. We took a poll, and our  
20 Chairman couldn't be here, so I came in his behalf. It was  
21 overwhelmingly.

22 Thank you.

23 MR. MEYRELES: Mr. Chairman, Members, my name is Raul  
24 Meyreles. I'm the Director of La Cooperativa, and I'm in  
25 support.

26 And I just want to remind the Committee that there is  
27 a much larger minority community which livelihood depends on the  
28





1 services provided to them, and instability in the Department  
2 could result in disruption of those services. And I will hope  
3 you take that into consideration.

4 Thank you.

5 MR. VAYS: Mr. Chairman, Senators, my name is Sigmund  
6 Vays, and I am the Chairman of the Legislative Committee for the  
7 Association of Southern California Energy Providers.

8 As Mr. Gonzalez reported to you, the overwhelming  
9 support, confirmation for Mr. Robert Martinez.

10 I would just like to point out to the press that, as  
11 a result of the riots in Los Angeles, time is of essence.  
12 People are suffering, low-income people, minority people are  
13 suffering. We need leadership.

14 CHAIRMAN ROBERTI: Thank you.

15 MR. RISLING: Mr. Chair, Committee, my name's Douglas  
16 W. Risling. I'm the Executive Director of the Northern  
17 California Indian Development Council, Incorporated, up in  
18 Eureka, California.

19 I represent the primary contractor for the delivery  
20 of Indian set-aside funds in the State of California. We  
21 currently serve about 57 counties, and 96 Indian reservations  
22 and rancherias.

23 And I would just like to offer our strong support of  
24 Mr. Martinez's appointment.

25 SENATOR PETRIS: Question.

26 Which county do you not serve?

27 MR. RISLING: I'm sure you're quite aware of it, the  
28



1 burg of Los Angeles.

2 [Laughter.]

3 CHAIRMAN ROBERTI: A little county.

4 MR. FEARON: Mr. Chairman, Senators, my name is  
5 Gregory Fearon. I'm the immediate past Chairman of the Board of  
6 Sonoma County People for Economic Opportunity, which serves  
7 Sonoma County. We're the CAP agency for Sonoma County. And I'm  
8 a past staff member of Senator Peter Behr.

9 I just wanted to say that I have watched the  
10 Department for a long time, and I have nothing but the greatest  
11 admiration for Mr. Martinez. I've seen the attitudes of the  
12 agencies in the community change toward the Department since his  
13 arrival, and I hope with all my heart that you confirm him.

14 CHAIRMAN ROBERTI: Thank you.

15 MR. AVILA: I'm Leo Avila. I'm the state Chair of  
16 the American G.I. Forum.

17 I have a prepared statement that I've left for  
18 distribution to you in the interest of saving your time.

19 We strongly support the nomination of Mr. Martinez.  
20 We're cognizant of the complaints that have been filed. We're  
21 sensitive to them, but in fairness to Mr. Martinez, we feel that  
22 he should be given an opportunity to work them out and continue  
23 to do the work that is necessary in that agency.

24 Thank you for your time.

25 MR. PARKER: Mr. Chairman, Members of the Committee,  
26 I'm William Parker, Director of the Economic -- Community Action  
27 Agency of San Mateo County, and a member -- and President of the  
28



1 Bay Area Poverty Resources Council.

2 Both organizations strongly hope that you will  
3 confirm Robert Martinez as the Director of DEO.

4 Thank you.

5 MS. VAUTHIER: Chairman Roberti, Committee Members,  
6 my name is Barbara Vauthier, and I'm the Executive Director of  
7 Cal/Neva Community Action Association, the largest association  
8 of nonprofit service providers in California.

9 I'm here on behalf of our President, Helga Lemke, who  
10 couldn't be with us. We very strongly support the confirmation  
11 of Mr. Martinez.

12 Before Bob came to DEO, the problems that we had were  
13 unimaginable, and I have to say that Cal/Neva was responsible  
14 for the campaign to the Governor's Office to make a change in  
15 the directorship.

16 We feel there has been a remarkable change in the  
17 communication, the cooperation. It's giving us the ability to  
18 provide the services to low-income people in California, which  
19 is what we're all supposed to be doing. We very strongly  
20 support the confirmation.

21 CHAIRMAN ROBERTI: Thank you.

22 Is there anybody else here?

23 I'm going to have to bring the hearing to a close.  
24 Is there anybody here who is from out of city? Please raise  
25 your hand. I'll let you come forward. Anybody else is going to  
26 have to come back next week.

27 All other confirmations will be put off until next  
28





1 week.

2 I do have to attend the Democratic caucus, and when I  
3 leave, there will not be a quorum.

4 Yes, please come forward.

5 MR. EVANS: Thank you.

6 My name is Jim Evans. I'm Executive Director of the  
7 Calaveras-Mariposa Community Action Agency, and also a member of  
8 the Board of Directors of the California Coalition of Rural  
9 Housing.

10 And in both capacities, we have appreciated  
11 Mr. Martinez's administration. It increased funding for our  
12 rural housing stock that's badly in need of it.

13 CHAIRMAN ROBERTI: Thank you.

14 MS. MARTINEZ: Mr. Chairman, my name is Val Martinez.  
15 I'm the President of the Association of Rural Northern  
16 California Energy Providers.

17 And I was coming today to offer our support for Bob  
18 Martinez's confirmation. Rural counties suffered tremendously  
19 under the previous Administration. Bob has shown a willingness  
20 to take on a leadership role in providing adequate funding for  
21 rural areas. For that, we greatly appreciate his efforts.

22 And again, I would like to say, I thank you for  
23 giving us this opportunity to speak on behalf of him. I have  
24 our written testimony for your record.

25 CHAIRMAN ROBERTI: You're welcome.

26 MS. MARTINEZ: In closing, I would like to say that I  
27 think that it's important that employees be given a proper  
28



1 opportunity and a proper area to explore their grievances. And  
2 I appreciate the fact that you weren't willing to take that up  
3 today.

4 CHAIRMAN ROBERTI: Is there anybody else from out of  
5 town? Please come forward.

6 MS. DOHERTY: My name is Jan Kuris Doherty. I  
7 represent the City of Los Angeles Community Development  
8 Department.

9 The City supports Mr. Martinez's confirmation for two  
10 basic causes. The first is that he has demonstrated leadership  
11 in establishing a true partnership between the service providers  
12 and the funding source, DEO, who could have otherwise been  
13 autocratic.

14 And secondly, for the sensitivity that he has brought  
15 into the system, particularly in the fact of the City of Los  
16 Angeles, its administrative burdens, and in helping address the  
17 immediate needs of the City in response to the recent crisis.

18 CHAIRMAN ROBERTI: Thank you very much.

19 We will hold all other witnesses until next week. I  
20 would like the witnesses, however -- I wish they hadn't filed  
21 out -- to indicate to the consultant that they were here so we  
22 can reschedule them for the next week. If they were not here  
23 today, they will not speak twice.

24 FROM THE AUDIENCE: What time next week?

25 CHAIRMAN ROBERTI: We meet Wednesday at 1:30.

26 With that, Senator Mello has rejoined us; however, it  
27 probably would still be my preference that the Democrats meet in  
28



1 caucus.

2 As you know, we have a major state deficit budget.  
3 We're meeting with the State Treasurer. It's important for us  
4 to get up-to-date information on that. It's unfortunate we  
5 can't do all things at the same time.

6 With that, we're going to adjourn until next week.  
7 We will take up rule waivers tomorrow on the Floor and items  
8 that are going to be put over to that extent.

9 We will adjourn until tomorrow on the Floor. The  
10 next regularly scheduled meeting will be next Wednesday at 1:30.

11 [Thereupon this portion of the  
12 Senate Rules Committee hearing  
13 was terminated at approximately  
14 4:20 P.M.]

15 --oo0oo--  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28






CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 14<sup>th</sup> day of May, 1992.

  
EVELYN J. MIZAK  
Shorthand Reporter





**199-R**

Additional copies of this publication may be purchased for \$5.00 per copy **plus current California sales tax.**

Senate Publications  
1100 J Street, B-15  
Sacramento, CA 95814

Make checks payable to SENATE RULES COMMITTEE.

**Please include Senate Publication Number 199-R when ordering.**

500  
R9  
no. 20  
5/20/92

HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 20, 1992  
2:20 P.M.

DOCUMENTS DEPT.

JUL 13 1992

SAN FRANCISCO  
PUBLIC LIBRARY





1                               SENATE RULES COMMITTEE  
2                               STATE OF CALIFORNIA  
3  
4  
5

6                               HEARING  
7  
8  
9

10  
11  
12                              STATE CAPITOL  
13                              ROOM 113  
14                              SACRAMENTO, CALIFORNIA  
15

16  
17  
18                              WEDNESDAY, MAY 20, 1992  
19                              2:20 P.M.  
20  
21  
22

23  
24  
25                              Reported by:  
26

27                              Evelyn J. Mizak  
28                              Shorthand Reporter



APPEARANCESMEMBERS PRESENT

SENATOR NICHOLAS PETRIS, Acting Chair

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ROBERT P. MARTINEZ, Director  
Department of Economic Opportunity

JIM GORDON  
Communications Workers of America

TOMMY FULCHER, Executive Officer  
Community Action Agency  
Santa Clara County

JULIE WRIGHT, Director  
Department of Commerce

NANCY C. GUTIERREZ, Director  
Department of Fair Employment and Housing

ERIC D. VEGA, Executive Director  
Human Rights and Fair Housing Commission  
City and County of Sacramento

LYDIA L. BEEBE, Member  
Fair Employment and Housing Commission



APPEARANCES (CONTINUED)

T. WARREN JACKSON, Member  
Fair Employment and Housing Commission

ARTHUR E. MADRID, Member  
Fair Employment and Housing Commission





INDEXPage

Proceedings

1

Governor's Appointees:

ROBERT P. MARTINEZ, Director  
Department of Economic Development

1

Witnesses in Support:

JIM GORDON  
Communications Workers of America

1

TOMMY FULCHER, Executive Director  
Community Action Agency  
Santa Clara County

2

Closing Statements by Nominee

3

Motion to Confirm

4

Committee Action

4

JULIE WRIGHT, Director  
Department of Commerce

5

Background and Experience

5

Questions by SENATOR PETRIS re:

Report Refuting Conclusions of  
Competitiveness Council

6

Permitting Delays

8

Arrogance of Local Clerks and Inspectors

8

Oversight of Local Applications

9

Office of Permit Assistance

10

Local Justification of Conduct

10

Functions of Office of Permit Assistance

11

Complaint about City of Berkeley's  
Requirements for Rebuilding

12



Questions by SENATOR MELLO re:

Stanford Report's Response to Competitiveness  
Council's Findings 15

Need for Better Data on Plant Closures 17

Workers' Comp. Rates Vs. Refunds 18

System for Identifying Plant Closures 19

Motion to Confirm 20

Committee Action 21

NANCY GUTIERREZ, Director  
Department of Fair Employment and Housing 21

Background and Experience 21

Witness in Support:

ERIC VEGA, Executive Director  
Human Rights and Fair Housing Commission  
City and County of Sacramento 23

Department Needs Resources to Ensure  
Compliance 23

Statements by SENATOR PETRIS re:

Supreme Court's Decision on Negating  
Commission's Damage Awards 24

Governor's Vetoes 24

Statement by SENATOR BEVERLY re:

Nominee Recipient of Pericles Award 25

Motion to Confirm 25

Committee Action 26

Statement of Intent by SENATOR PETRIS to Put Over  
Confirmation Hearing of T. WARREN JACKSON 26

LYDIA BEEBE, Member  
Fair Employment and Housing Commission 26

Background and Experience 27



1		
2	Development of Regulations regarding Family	
3	Leave Act	27
4	Questions by SENATOR PETRIS re:	
5	Sexual Harassment in Workplace	31
6	<u>Peralda</u> Decision	32
7	Case Involving Four Complainants against	
8	Three Male Restaurant Owners	32
9	Awards by Commission Unenforceable	33
10	Request to Governor to Support Legislation	
11	Giving Commission Statutory Authority to	
12	Award Monetary Damages	34
13	Governor in Support of Current	
14	Bergeson Legislation	35
15	Motion to Confirm	36
16	Committee Action	36
17	ARTHUR E. MADRID, Member	
18	Fair Employment and Housing Commission	30
19	Background and Experience	30
20	Motion to Confirm	36
21	Committee Action	37
22	Termination of Proceedings	37
23	Certificate of Reporter	38
24		
25		
26		
27		
28		





## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

SENATOR PETRIS: Now we'll take up Governor's appointees whose appearance is required. The first one is Mr. Robert Martinez, Director of the Department of Economic Opportunity, put over from prior hearings.

Are there any here who are going to testify? We've had extensive hearings before. How many? We have two. We'll ask each to keep their comments relatively short, because we have gone into this, both pros and cons, very extensively.

Do you want to identify yourself and organization, if you're representing one

MR. GORDON: Yes, Senator Petris and Members.

Jim Gordon with Communications Workers of America. I also am a member of the Advisory Committee to the Department of Economic Opportunity, representing organized labor.

And I sent a letter to the Committee in January indicating our strong support as labor for the appointment, or confirmation of the appointment of Robert Martinez. And I just wanted to come for the record. I understand there was some opposition.

I was unable to be here last week, and I want to state that that support remains strong, and in fact, since I wrote the letter, if anything has happened, my opinion has been strengthened in terms of the way he has been dealing with the Advisory Committee, and the way we see him operating and running the Department.



1                   So, I just wanted to state that for the record; urge  
2 your confirmation.

3                   SENATOR PETRIS: Thank you, Mr. Gordon.

4                   Any questions of the witness?

5                   Anyone else in favor?

6                   MR. FULCHER: Mr. Chairman, my name is Tommy Fulcher.  
7 I'm the Executive Director of the Community Action Agency in  
8 Santa Clara County. I'm also Vice Chairman of the Metropolitan  
9 Chamber of Commerce in San Jose, and President of the Public  
10 Affairs Council in Santa Clara and San Benito Counties.

11                   I say that to indicate the breadth of my involvement  
12 in my county and surrounding county, and to indicate that I'm  
13 aware of the breadth of DEO's involvement in our county, and a  
14 lot of agencies that they support and that they fund.

15                   I've been in this job about ten years, and I've had  
16 the pleasure to work with Mr. Martinez when he was Director some  
17 years ago. And I know that when he came in before, there were  
18 problems; when he came in this time, there were some problems.

19                   One thing that I can say about Bob is that he is  
20 competent, and that's something that we need more now than ever.  
21 The resources are thin. We have to be more accountable.

22                   Mr. Martinez, when he comes in, you can tell the  
23 difference in the way that the -- the entire network that's  
24 involved with DEO responds. He's competent, and he's been fair.  
25 He requires accountability, and, you know, I don't get to  
26 Sacramento that often. I don't like to come up here. But in  
27 this case --  
28



1           SENATOR PETRIS: It's not such a bad place, actually.

2                               [Laughter.]

3           MR. FULCHER: I like to stay home and do my job, and  
4 not come up here.

5           But I thought this was important, to come up here,  
6 because we're in critical times now. We require good government  
7 managers, and that's what Bob Martinez is. And I just came up  
8 to offer my strong support for his appointment.

9           SENATOR PETRIS: Thank you.

10           Are there any questions?

11           I hope you can tell the folks back home that you made  
12 it alive out of Sacramento.

13                               [Laughter.]

14           SENATOR PETRIS: Now, are there any other witnesses,  
15 either for or against?

16           There being none, do you want to make any brief --

17           MR. MARTINEZ: Just very briefly, recognizing the  
18 Committee's time constraints, Mr. Chairman, just to reiterate  
19 that a number of the individuals that are represented here today  
20 have submitted their comments, and I'm very appreciative of  
21 those comments. And if it were not for the extreme time  
22 constraints, I'm sure they would be allowed the opportunity.

23           We have members of our Advisory Commission here as  
24 well.

25           SENATOR PETRIS: Why don't we have them raise their  
26 hands, those that are here in support?

27           Are you all going to leave after this item?  
28





1 MR. MARTINEZ: Yes, Mr. Chairman, quietly. They're  
2 going to leave quietly, Mr. Chairman.

3 [Laughter.]

4 SENATOR PETRIS: You're not going to stick around?  
5 That's like the Budget hearings at the city councils. They get  
6 a big crowd during the budget, and then they disappear the rest  
7 of the year.

8 Well, that's all right. At least you're here this  
9 one time. Welcome.

10 FROM THE AUDIENCE: Two times.

11 SENATOR PETRIS: Two times, yes.

12 All right, the Chair is ready for a motion on this  
13 confirmation.

14 SENATOR MELLO: Move it.

15 SENATOR PETRIS: Moved by Senator Mello.

16 Secretary will call the roll.

17 SECRETARY WEBB: Senator Beverly.

18 SENATOR BEVERLY: Aye.

19 SECRETARY WEBB: Beverly Aye.

20 Senator Mello.

21 SENATOR MELLO: Aye.

22 SECRETARY WEBB: Mello Aye.

23 Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Petris Aye.

26 Senator Craven. Senator Roberti.

27 Three to zero.  
28



1 SENATOR PETRIS: Thank you.

2 Ordinarily, I would have asked to make the motion,  
3 because Mr. Martinez is from my home town, and I knew him long  
4 ago.

5 MR. MARTINEZ: Thank you, Mr. Chairman.

6 SENATOR PETRIS: We're recommending confirmation to  
7 the Floor.

8 MR. MARTINEZ: Thank you, Mr. Chairman.

9 SENATOR PETRIS: Congratulations.

10 [Applause.]

11 SENATOR PETRIS: All right, the next one we have for  
12 the confirmation process is Director of the Department of  
13 Commerce, Julie Wright.

14 MS. WRIGHT: Good afternoon.

15 SENATOR PETRIS: This is your first appearance?

16 MS. WRIGHT: Yes, it is.

17 SENATOR PETRIS: We ask, the Chair always asks the  
18 nominee to tell us why you think you're qualified to hold this  
19 position.

20 MS. WRIGHT: Well, I've spent the last 25 years,  
21 virtually all of my career, in the private sector; most of it in  
22 high technology and aerospace. And I've been involved in two  
23 major areas: marketing and public policy. And as I look at the  
24 mission of the Department of Commerce, it has heavy involvement  
25 in both, particularly in the public policy arena in the last  
26 couple of years.

27 I think that marketing the State of California is  
28



1 chiefly the role of the Department of Commerce, and many of the  
2 efforts underway now in the Legislature and that we have been  
3 involved with are going to assist greatly in that task.

4 In the ten months, eleven months, that I have been  
5 here, I've taken a number of steps that I think enhance our  
6 marketing efforts. And I'd be pleased to cover those, if you'd  
7 like me to.

8 I love California. I think it's a terrific state, as  
9 I'm sure you do. And that's a key reason that I came.

10 SENATOR PETRIS: There are about a half million  
11 people who disagree with you. They moved out last year.

12 Does anyone have any questions?

13 I had a couple, if I may.

14 There's been a lot of literature in the last few  
15 months particularly centering around the L.A. Chamber of  
16 Commerce study of the massive flight of industry and other  
17 businesses out of California. A couple days ago, there was a  
18 different study published by a group called Policy Study  
19 Committee on Economics, and something or other. I forget the  
20 name. They're in Palo Alto.

21 MS. WRIGHT: Right.

22 SENATOR PETRIS: And they refute in detail the  
23 conclusions of that L.A. Chamber report, and the Ueberroth  
24 report, and point to more traditional reasons, going way back  
25 twenty years.

26 Are you familiar with that report?

27 MS. WRIGHT: Yes, the --  
28





1           SENATOR PETRIS: Pardon?

2           MS. WRIGHT: Yes, I am.

3           SENATOR PETRIS: Which ones are we supposed to  
4 believe? Is the answer somewhere in between?

5           MS. WRIGHT: Clearly, the recession has been a major  
6 cause of job loss in California.

7           On the other hand, there have been literally dozens  
8 of surveys done over the last couple of years, and what I have  
9 tried to focus on is what the consistent messages are in some of  
10 them.

11           When you look at something like the L.A. County EDC  
12 and the Aerospace Task Force assessments, we have concentrations  
13 of industries in certain parts of the state, and the messages in  
14 some of those areas are quite clear.

15           I've tried to focus on the common denominators. And  
16 while I don't dispute what the -- I think it's called the Center  
17 for the Continuing Study of the California Economy --

18           SENATOR PETRIS: Yes, that's it.

19           MS. WRIGHT: -- said about some of the reasons, I  
20 think they are incorrect to dispute the reasons that are  
21 outlined in the Competitiveness Council's report and the others.

22           Many of the issues that face California companies are  
23 quite measurable. The length and complexity of permitting  
24 times, for example, is just very clear and black and white. The  
25 cost to employers of Workers' Compensation is something that's  
26 also measurable.

27           So, rather than try to pick apart some of the things  
28



1 that are different in the various studies, I think we can look  
2 at what appears to be a continuing theme through most of them.  
3 And frankly, I think that's one of the reasons that there's so  
4 much movement in Sacramento this year to resolve some of the  
5 issues that we can all come to agreement on.

6           SENATOR PETRIS: Is the permit delay primarily at the  
7 local level or state agencies?

8           MS. WRIGHT: I think there are issues in both, and in  
9 addition to delays, the biggest parts of the problem relate to  
10 the fact that the time is unpredictable. And of course for a  
11 business, we've just been dealing with an issue relating to a  
12 semiconductor company, where their product life cycles are so  
13 fast that taking a year or two to permit a facility, for  
14 example, would be absolutely unacceptable.

15           I would also tell you that we have convened some what  
16 I call Red Teams to bring city, county, and state people  
17 together where it's been necessary to get the decision makers in  
18 the room, and we can solve those problem on an individual basis.

19           But what I think we need to do at both the local  
20 levels and the state level is to achieve a level of consistency  
21 and predictability in the process.

22           SENATOR PETRIS: We've all heard the horror stories,  
23 and I've heard some over the years, including recent ones, that  
24 kind of drive you batty.

25           It seems to boil down to an absolutely arrogant  
26 attitude of a clerk or an inspector. Most of the complaints I  
27 get are about inspectors, all different kinds. They seem to  
28



1 take a lot of joy and delight in being a gladiator in an arena.  
2 And instead of trying to educate the applicant as to what's  
3 wrong and trying to be helpful, they like to drive that sword  
4 right through him first chance they get, and then make him come  
5 back and come back.

6 The stories are, understandably, maddening to the  
7 applicant, which normally is a small business.

8 Now, does your agency do any oversight or monitoring  
9 of things like that? Do you get -- suppose I were a businessman  
10 in this community, and I was given the run-around by the city or  
11 the county. In fact, I heard of a county case recently of a  
12 person who owned 1500 acres of land, wanted to carve out 150  
13 acres for a particular use. Based upon what he was told by the  
14 bureaucrats -- I assume it's county; I'm not sure -- it would  
15 take him \$20,000 and four months just to carve out on paper 150  
16 acres.

17 Now, that would just about blow my mind if I were the  
18 applicant.

19 I wonder if any of them have come to your shop and  
20 said, "Hey, you're supposed to be promoting business in this  
21 state. They're driving us out and keeping others out."

22 Can you do something to come down on them and make  
23 them accountable as a representative of the Governor? The  
24 Governor's policy has been stated over and over again: he  
25 doesn't like this, and he'd like to change it.

26 MS. WRIGHT: Right.

27 We are not vested with statutory authority to do  
28





1 that. What I have done is, I have allocated --

2 SENATOR PETRIS: Do you want some statutory  
3 authority?

4 MS. WRIGHT: The Governor --

5 SENATOR PETRIS: I mean, I think there's some Members  
6 here who would be glad to see that you get it.

7 MS. WRIGHT: The Governor's Office of Permit  
8 Assistance has that statutory authority. We work with them.

9 What we also have done is, I have a couple of people  
10 on my staff who are very conversant. The primary area where we  
11 get involved is on environmental permitting.

12 And so, what we have done is, I have a couple people  
13 on my staff who are very good in that area, and we've assembled  
14 what those of us from aerospace would call Red Teams, where we  
15 bring the right players together, and we cut through, and we try  
16 to deal with the policy issues and get to a prompt resolution.

17 That's very labor-intensive. It's not a substitute  
18 for making the process clear and predictable in an of itself,  
19 but we have done that, and we really do it as an advocate for  
20 business.

21 SENATOR PETRIS: What have you found in conducting  
22 those sessions of the Red Teams? What do the local people tell  
23 you that purports to justify the kind of conduct that we all  
24 know about and which upsets us? How do they justify it?

25 MS. WRIGHT: Well, I guess we don't focus as much on  
26 justifying it as on trying to fix the processes and solve an  
27 immediate problem.  
28



1  
2 For example, last year we had a problem when a Bay  
3 Area company, NUME, wanted to modernize a vehicle manufacturing  
4 line that, by the year 2000, would have them emit less volatile  
5 organic compounds than they emit today at 70 percent production.  
6 And it was a matter of getting Cal. EPA and the Air Resources  
7 Board, and ultimately the Bay Area air district, into the room,  
8 and it -- they ultimately came up with an incentive to  
9 modernize, because they realized, I think, with policy makers at  
10 the table, that good public policy was cleaning the air, not  
11 penalizing people in the difficulty in getting from here to  
12 there.

13 So, in all honesty, we haven't worked as hard to try  
14 to find fault, but to try and solve an immediate problem.

15 Now, I agree with you, and several years ago, when I  
16 worked in a consumer-oriented part of my company, David  
17 Horowitz, noted consumer reporter, said, you know, it's a shame,  
18 but sometimes it's the lowest level of people, the lowest paid  
19 people, who really create the image of your organization. And I  
20 frankly think that within my own Department, we work on that,  
21 and we have tried to build a team effort. I think that's true  
22 throughout government at all levels.

23 SENATOR PETRIS: What is the Governor's -- what did  
24 you call it -- Permit Appeal?

25 MS. WRIGHT: It's the Office of Permit Assistance.

26 SENATOR PETRIS: What do they do in the case of an  
27 individual grievance? Do they immediately consult the local  
28 agency involved --



1 MS. WRIGHT: Yes.

2 SENATOR PETRIS: -- and discuss the problem?

3 MS. WRIGHT: I believe they do the same thing. They  
4 have a broader mandate, in that they do land-use permitting, and  
5 things like that. Where, in the business arena, we have found  
6 virtually all of the issues relating to environmental  
7 permitting.

8 SENATOR PETRIS: Let me walk you through a problem  
9 and ask you how your agency would respond if the complaint were  
10 made to you, and I guess you'd bounce it over to this other  
11 office.

12 But in the City of Berkeley, an 80-year old man lost  
13 his home in a fire. He decides to rebuild, which I think, at  
14 his age, is highly commendable. I mean, if I reached his age, I  
15 wouldn't buy any more green bananas, you know.

16 [Laughter.]

17 SENATOR PETRIS: And here he is, building a house all  
18 over again.

19 He goes to the City with his architect, and they put  
20 him through the hoops, everything he's supposed to do, and he  
21 thinks he's ready to go. One of the requirements is that he has  
22 to get 40 signatures of neighbors approving the plans for his  
23 house, forty. So, he does it.

24 And he goes into the agency with his architect. And  
25 this person with the kind of attitude I'm talking about says,  
26 "Well, you've got a problem here." Even though they had met and  
27 talked about it before, now he springs a new one on him, and he  
28





1 says, "You've gotta move this line three feet, the garage," I  
2 guess three feet back, a setback.

3 So, the architect, who's sitting there, to save time  
4 he says, "Fine." He takes a ruler and he draws it three feet,  
5 and he puts it on his own copy of the plans, and he says,  
6 "Done."

7 Do you know what he told them? He says, "Well, now  
8 you have a whole new set of plans. This is not the original  
9 plan. You got to go out and get 40 signatures again," because  
10 of what this guy told him to do, three feet.

11 Now, when I heard that, you know, I just went  
12 bananas, if you'll pardon the repetition.

13 [Laughter.]

14 SENATOR PETRIS: But anyway, if I came to you with  
15 that problem what would you do?

16 MS. WRIGHT: Well, of course, our focus --

17 SENATOR PETRIS: I know it's not your jurisdiction.

18 MS. WRIGHT: Right.

19 SENATOR PETRIS: But after getting all upset, what  
20 would you advise me to do?

21 MS. WRIGHT: What we would normally do with a  
22 business is, we would try to intercede in the local community,  
23 often working with our local economic development counterparts,  
24 because what we are talking about is a very labor-intensive  
25 action.

26 What we've been trying to do in commerce on a broad  
27 scale, because we are just not equipped to be able to handle --  
28



1 help every company in the state, is, we've tried to deal with  
2 these issues on a more generic basis, if you will, in working,  
3 in our case, with local economic development organizations and  
4 local governments. So that we appreciate the issues that local  
5 regulations and fees and assessment put on business.

6 I think it is a business climate issue insofar as  
7 there are recent studies that show as much as \$40,000 in the  
8 cost of a home relate to regulatory oversight. And that makes  
9 it more difficult for California to have the kind of affordable  
10 housing that will help us attract businesses to the state in  
11 many areas of the state.

12 I share your concern, and I come from an industry,  
13 aerospace, that has embraced the approach called "total quality  
14 management," where it's really a sea-change in the culture of an  
15 organization. And I think it's not easy, and it's not done  
16 quickly.

17 I'm trying to do that in my own Department, and  
18 trying to do it in the processes that we come in contact with.

19 I don't know the answer to your question, except I  
20 think it needs to be done at all levels in California.

21 SENATOR PETRIS: Maybe we should have some  
22 legislative committee hearings around the state, and bring  
23 people like this who say, "Now you've got to get another forty  
24 signatures," bring them up to the hearing and say, "What in the  
25 world are you doing this for? How can you possibly justify it?"

26 The answers I've heard are, "Well, it's the  
27 Legislature. They pass the laws." And you look for the law,  
28



1 and you can't find it.

2 MS. WRIGHT: Yes.

3 SENATOR PETRIS: First of all, it's an ordinance, and  
4 their application of the ordinance is such that you can't  
5 recognize the ordinance.

6 I'm willing to bet anything that there's no ordinance  
7 that that required this fellow to do what he did in that  
8 particular case. That's just his own smarts, you know.

9 Any other questions? Senator Mello.

10 SENATOR MELLO: I just want to follow through briefly  
11 on the point you were raising, making.

12 Did you happen to see the report made by two  
13 professors from Stanford? Their response to the Peter  
14 Ueberroth, the Commission's report on California  
15 Competitiveness. It was in yesterday's L.A. Times, I believe.

16 MS. WRIGHT: Yes, I did see that.

17 SENATOR MELLO: Let me explain to the Committee what  
18 I think they said. Less than five percent of the moving of  
19 business out of California, and also decline in business, is due  
20 to laws in California and things that we do. They said 95  
21 percent is due to the recession, the national recession that's  
22 happening. And within that 95 percent is also competition from  
23 other countries and other -- within the state.

24 But they say, I mean, everybody's saying we've got to  
25 cut Workers' Comp; we've got to do this; we've got to do that.  
26 We have too many permit systems.

27 But this report, and I thought it was well written, I  
28





1 looked through it to try to see whether or not it's credible or  
2 not, but I thought they made some excellent points in rebutting  
3 what the Ueberroth Commission said, trying to put the blame on  
4 California for this loss of jobs.

5 I'd like to hear your response to that.

6 MS. WRIGHT: Let me respond to that in a couple of  
7 ways.

8 Number one is, it has been very difficult to measure  
9 specific flight from California. We've wrestled with that  
10 within the Department, and we have looked at, for example,  
11 looking at Dunn & Bradstreet address changes, looking at the EDD  
12 ES-202 data, which is restricted because it's confidential,  
13 looking at our own data collection program which, in a similar  
14 program in New York, required six people that I don't have to do  
15 it.

16 So, some of the business flight data is anecdotal.  
17 Some of it is done in surveys, where people talk about  
18 intentions.

19 My concern is that, while I think some of the issues  
20 raised in the Stanford report have merit, I don't agree with  
21 their criticisms of the Competitiveness Council Report because  
22 -- a couple of reasons. One is, I hear too frequently about  
23 business plans to leave. I've been in the head-to-head  
24 competitions with other states, where companies are making  
25 choices and doing the kind of bottom-line analysis that says  
26 whether they can afford or desire to be in California and be  
27 competitive in California.  
28



1           And thirdly, I think we're looking at issues like  
2 biotechnology, where the decisions about whether to manufacture  
3 in California are made on a plain sheet of paper. These will be  
4 green field start-ups, and they have wide open choices about  
5 where they can site their facilities.

6           And I think that for us to try and dismiss issues  
7 like permitting and Workers' Compensation as not being the major  
8 part of the problem, they are, to my mind, de facto, the major  
9 part of the problem if they are a reason cited for a company  
10 building a new facility, expanding, or relocating outside of  
11 California. For those companies, those are the reasons.

12           That is not to take away from the impact of the  
13 recession on California. Certainly that, and the fact that we  
14 have had the impacts of the DOD budget cuts, have had a  
15 significant impact on the state.

16           But it also says that in a high growth economy, when  
17 your return on sales is 10-15-20 percent, that the fact that  
18 Workers' Compensation may cost you little more is a nuisance.

19           When you're cutting costs and worried about staying  
20 in business and being profitable, the fact that Workers' Comp.  
21 is costly in California is a much bigger issue. And I think  
22 that's one of the reasons in the last couple of years that these  
23 issues have really been voiced over and over again, because our  
24 companies are struggling with the effects of the recession.

25           SENATOR MELLO: The thing that's hard to believe is  
26 that we don't have better data as far as plants leaving  
27 California, because I think if you call each of the 50 counties,  
28



1 someone knows.

2 I know in my area, Green Giant when to Mexico with  
3 about half of their operation. Tri Valley Growers closed up,  
4 Sumplot Foods. I can give you a list of who they are, because  
5 I'm watching them very close and concerned about them.  
6

7 But they didn't go because of California's business  
8 climate. They left because they can hire workers in Mexico for  
9 \$3 an hour --

10 SENATOR PETRIS: It's 85 cents in their case.

11 SENATOR MELLO: Yeah, instead of what they're paying  
12 here, you know, a lot more.

13 MS. WRIGHT: Right.

14 SENATOR MELLO: So, somebody ought to have this  
15 information. If these plants close down, you call up any EDD  
16 office in the whole state, they ought to know, because these  
17 people come in and start either applying for EDD help and  
18 assistance, or unemployment. But now, that's been told to me  
19 several times.

20 The other thing about Workers' Comp. that's come to  
21 my attention -- well, as an employer, I know this happens, but  
22 I've been forgetting about it -- they've been saying how high  
23 Workers' Comp. rates are. One firm showed me a million-and-a-  
24 half dollars, what his Workers' Comp. was. And as we get  
25 talking and talking, I said, "What was your net cost?" Because,  
26 if you have a good safety program, then you get a refund at the  
27 end of the year. Well, his cost was \$600,000, which is still a  
28 lot of money, but when you compare that to one-and-a-half





1 million, he was making a big case about one-and-a-half million,  
2 but actually his out of pocket cost is 600,000.

3 That's the kind of message I'm hearing from people.  
4 They're not telling us what is their net cost. If you're  
5 putting up a deposit, that's one thing. What is your cost? And  
6 that's what I hear in Workers' Comp.

7 Sure, it's got some -- we ought to clean it up. It's  
8 the highest cost, lowest benefits, and it's poorly administered,  
9 I think. And that hasn't been the fault of the Legislature.  
10 George Deukmejian and his Director there for the Department of  
11 Industrial Relations, Mr. Rinaldi, I mean, they just felt the  
12 way to fix Workers' Comp. is to let it go down and be destroyed,  
13 then you start building up from the beginning.

14 But it's been a horrible mess, and I don't know  
15 whether this Administration's going to do anything with it or  
16 not, other than say they want to cut down the premiums by \$3  
17 billion.

18 But I think there's more worse, within the system,  
19 there has to be, you know, get rid of the fraud and do something  
20 about the workers' benefits along there, too.

21 MS. WRIGHT: Yes, that's true.

22 SENATOR MELLO: Just answer, because we want to move  
23 along, can't you come up with a system to know what these plant  
24 closures are, losing jobs here?

25 MS. WRIGHT: The EDD ES-202 data is confidential.  
26 We've explored --

27 SENATOR MELLO: When plants close, that's  
28



1 confidential?

2 MS. WRIGHT: Well, and it's not always due to a plant  
3 closure. It can be a cutback.

4 What we are doing is, we're looking at the Board of  
5 Equalization data on sales and use tax permits. And I think  
6 what we're going to do is to draw a small group of people  
7 together and see, because most of the avenues that we've  
8 explored either have a significant cost in outside fees or in  
9 labor to the Department. And we're trying to find a way that  
10 will be credible and consistently reliable data over time. And  
11 thus far, the Board of Equalization sales and use tax permits  
12 would appear to encompass the majority of businesses within the  
13 state.

14 SENATOR MELLO: We've got to find a bureaucracy,  
15 somebody ought to know when there's a plant closing down.

16 Well, thank you.

17 SENATOR PETRIS: Any other questions?

18 Senator Beverly moves the confirmation.

19 SENATOR BEVERLY: Yes, and I'm pleased to do so.  
20 I've known Ms. Wright for some years in her position with TRW in  
21 Redondo Beach. She's an excellent woman, a hard worker, and a  
22 credit to the Administration.

23 SENATOR PETRIS: Okay, call the roll.

24 SECRETARY WEBB: Senator Beverly.

25 SENATOR BEVERLY: Aye.

26 SECRETARY WEBB: Beverly Aye.

27 Senator Mello.  
28



1 SENATOR MELLO: Aye.

2 SECRETARY WEBB: Mello Aye.

3 Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris Aye.

6 Senator Craven. Senator Roberti,

7 Three to zero.

8 SENATOR PETRIS: Your confirmation's recommended to  
9 the Floor.

10 MS. WRIGHT: Thanks very much.

11 SENATOR PETRIS: We'll go to number four, Director of  
12 the Department Fair Employment and Housing, she's here. I  
13 understand you have a time problem and you have to run, so we'll  
14 take you out of order.

15 MS. GUTIERREZ: Thank you.

16 SENATOR PETRIS: Just tell us why we should approve  
17 your confirmation, okay?

18 MS. GUTIERREZ: Okay, I sure will. Thank you.

19 My name is Nancy Gutierrez. I feel that I'm uniquely  
20 qualified to fill the position of Director of the Department of  
21 Fair Employment and Housing.

22 My personal and professional commitment to civil  
23 rights has been clearly demonstrated over the years. I bring  
24 over 30 years of management experience in the private sector. I  
25 have five brothers and no sisters, so I think you can see why  
26 equality issues have always been important to me.

27 I joined the Bell System as an operator and moved  
28





1 steadily up through the ranks, retiring as Director of Human  
2 Resources in 1991. I've held various line and staff management  
3 positions in disciplines as diverse as technical, customer  
4 service, marketing, operations, and finance.

5 So, in addition to my corporate experience, I also  
6 have been a very active member of the community, with special  
7 emphasis on educational and developmental issues for  
8 under-represented minorities and women. I'm a member of the  
9 Board of Directors of the National Women's Employment and  
10 Education Foundation, the Society of Hispanic Professional  
11 Engineers Foundation, Leadership America, National Network of  
12 Hispanic Women, and Angeles Girl Scouts, in addition to numerous  
13 advisory boards.

14 I've been the recipient of and complemented by  
15 numerous awards in recognition of my work in the field of human  
16 resources and valuing diversity.

17 I believe that effective leadership inspires others  
18 to reach beyond themselves to accomplish greater goals. My  
19 background, skills, and demonstrated commitment to civil rights  
20 give me the tools to translate ideas and visions into actions  
21 and meaningful contributions to the people of California.

22 My experience as a successful minority woman in a  
23 major corporation has given me a perspective on both the needs  
24 of business and the rights of workers. I respectfully ask for  
25 your confirmation so I can continue as Director and provide the  
26 strong leadership to the missions of the Department.

27 SENATOR PETRIS: Thank you.  
28



1 MS. GUTIERREZ: Thank you.

2 SENATOR PETRIS: Are there any questions or comments  
3 by Members of the Committee?

4 Anyone care to testify for or against?

5 MR. VEGA: Good afternoon. My name is Eric Vega.  
6 I'm the Executive Director of the Human Rights and Fair Housing  
7 Commission of the City and County of Sacramento.

8 On behalf of the Commission, I'm here to support  
9 Nancy Gutierrez. Our Commission on a daily basis hears the  
10 stories and complaints; things like, "Please help me. I'm being  
11 sexually harassed." "Please help me; I was beaten up, and I'm  
12 African-American, and they beat me up because of that."  
13 "Please help me. I'm in a wheelchair, and they won't give me  
14 access."

15 And we try to help those people, but often times what  
16 it ends up is that we refer it over to the Department of Fair  
17 Employment and Housing. And I know that Nancy Gutierrez, and  
18 Earl Sulloway, and the people in leadership there, make a strong  
19 effort to address those kinds of issues.

20 But I did want to say that Nancy Gutierrez cannot do  
21 her job if the resources are not there to do the job. And the  
22 Department is continually suffering from budget cuts.

23 I just wanted to make notice of a couple of things.  
24 In 1990-91, a \$14 million budget was slashed to 2.15 for 1991  
25 and '92. And the Office of Compliance Programs was shut down,  
26 eliminating monitoring of 7,000 state contractors, and it goes  
27 on and one, and a number of people have been laid off, et  
28



1 cetera.

2           The key point that I wanted to make was that budgets  
3 -- budgets are a civil rights issue; that equity costs. Equity  
4 costs. And unless Nancy Gutierrez is given the kind of  
5 adequate resources to investigate and to bring people into  
6 compliance, the racism, and the homophobia, and sexism that  
7 plagues our society will continue.

8           And I guess I wanted to leave it by saying that I  
9 hope you can, in confirming her, send a message to the Governor  
10 that it's not enough to simply extend a smile or say some words  
11 about opposing discrimination. It's important to put the  
12 resources and the teeth behind the smile to make civil rights  
13 enforcement a reality in California.

14           SENATOR PETRIS: Well, we've been trying to do that.  
15 We've been passing bills strongly supported by the Commission,  
16 composed of appointees of Governor Deukmejian, all of them drawn  
17 from business, to beef up their powers, which the Supreme Court  
18 said they didn't have, to award damages, especially in sexual  
19 discrimination cases and harassment. That's been the worst  
20 problem of all in the last few years, and we can't do anything.

21           There are some horror stories that came out of my  
22 county, where they got excellent awards from the Commission.  
23 They were stricken by the Supreme Court. It's an outrageous  
24 condition.

25           I've had bills to correct it. Deukmejian vetoed  
26 them. Senator Bergeson has had bills vetoed by Deukmejian and  
27 more recently vetoed by Governor Wilson.





1                   So, I don't know what we have to do to send a  
2 message. We got tremendous support from both parties, and both  
3 men and women in the Legislature, and we didn't get anywhere.  
4 We'll have to keep trying.

5                   That will also help her do a better job and the  
6 Commission itself.

7                   MR. VEGA: That's right.

8                   SENATOR PETRIS: Thank you.

9                   Any other witnesses either for or against?

10                  Do I hear a motion?

11                  SENATOR BEVERLY: Mr. Chairman, one comment.

12                  I note that in 1985, Ms. Gutierrez won the Pericles  
13 Award. That should interest you.

14                  SENATOR PETRIS: Can I vote twice for her?

15                                 [Laughter.]

16                  SENATOR BEVERLY: I move approval of the  
17 confirmation.

18                  SENATOR PETRIS: Okay, we have a motion.

19                  Congratulations on the Pericles Award.

20                  MS. GUTIERREZ: Thank you.

21                  SENATOR PETRIS: Call the roll.

22                  SECRETARY WEBB: Senator Beverly.

23                  SENATOR BEVERLY: Aye.

24                  SECRETARY WEBB: Beverly Aye.

25                  Senator Mello.

26                  SENATOR MELLO: Aye.

27                  SECRETARY WEBB: Mello Aye.

28



1 Senator Petris.

2 SENATOR PETRIS: Aye, Aye.

3 [Laughter.]

4 MS. GUTIERREZ: Thank you, thank you.

5 SECRETARY WEBB: Petris Aye.

6 Senator Craven. Senator Roberti.

7 Three to zero.

8 SENATOR PETRIS: That nomination is recommended to  
9 the Floor of the Senate.

10 Thank you.

11 Let's take a five-minute break.

12 [Thereupon a brief recess was taken.]

13 SENATOR PETRIS: We will resume as a subcommittee in  
14 order to move along. We're losing a lot of time.

15 Let's ask Ms. Lydia Beebe, Fair Employment and  
16 Housing -- I think, in fact, why don't we have all three come  
17 forward. We could save a little time. Pull up an extra chair.

18 Mr. Jackson is outside, I guess.

19 Mr. Jackson, do you want to come up front?

20 I thought we'd bring all three up and save a little  
21 time.

22 In Mr. Jackson's case, we got last-minute expressions  
23 of concern. I guess you've been told about it.

24 MR. JACKSON: Yes, sir.

25 SENATOR PETRIS: We're going to ask that  
26 consideration of your appointment go over so the people who came  
27 in to see us at the last minute will have a little more time to  
28



1 get information.

2 It doesn't necessarily mean something's going to go  
3 awry at the hearing. It could, but this is not an unusual  
4 request. It's done quite frequently. I just want to reassure  
5 you to that extent.

6 In fact, maybe you and I could talk sometime in  
7 between now and the time of the next meeting.

8 MR. JACKSON: I would appreciate that.

9 SENATOR PETRIS: Okay.

10 So, we're going to excuse Mr. Jackson. You're  
11 welcome to stay and watch the proceedings, but we won't be going  
12 into questioning of you at this time.

13 Now, Ms. Beebe, can you tell us, following our usual  
14 pattern, why you feel you're qualified to be appointed?

15 MS. BEEBE: Surely, Mr. Chairman, Senator.

16 My name is Lydia Beebe. I'm a lawyer from San  
17 Francisco. I have worked for the last fifteen years for Chevron  
18 Corporation in a variety of assignments, most of which have been  
19 in the public affairs, government affairs, and tax areas.

20 Throughout those years, I have spent a great deal of  
21 time working on public policy issues, legislation, and  
22 regulations. This is experience that I think will be very  
23 valuable to the Commission, and in some cases, already has.

24 The main project the Commission has had to work on in  
25 the five months since I was appointed by Governor Wilson has  
26 been the development of the regulations concerning the Family  
27 Leave Act that was passed by the Legislature last fall.





1 I was one of three members of the subcommittee that  
2 worked on those regulations. I think our subcommittee met four  
3 times to consider the regulations. The Commission itself met  
4 another three or four times, took some public testimony. We  
5 received numerous written comments, and did publish the  
6 regulations in proposed form last month.

7  
8 As a Commissioner and as a member of the  
9 subcommittee, I must say I was pleased both with the process  
10 that we used and with the regulations that we published. We've  
11 received a lot of very positive comments about the openness of  
12 the proceedings and the fact that the proposed regulations were  
indeed thoughtful.

13 And we certainly look forward to the opportunity to  
14 continue that process as we try to finalize those regulations.

15 From a personal point of view, I guess I should add  
16 that I was delighted that the first issue that I worked on as a  
17 Commissioner had to do with the Family Leave Act. I think the  
18 women's issues or the issues of women in the workplace are the  
19 ones certainly that I have the most personal experience with.  
20 And as a working woman, and as a working mother, with my  
21 experience in corporate America, I guess I think that will be  
22 very helpful to the Commission in our trying to balance the  
23 needs of the employees and the employers in our state, and  
24 trying to work out a balance between those needs.

25 My first invitation to speak as a member of the  
26 Commission was to address the California County Councils on the  
27 gender bias issue. I was delighted to accept that invitation  
28



1 and do look forward to those opportunities to try to raise the  
2 awareness of people in our state about the gender and other bias  
3 issues in the workplace.

4 I guess the last thing I wanted to add was, in this  
5 kind of difficult economic times, I think it's really crucial  
6 that our state remain committed to equal opportunity and freedom  
7 from discrimination, and in those few months that I've been  
8 involved in the Commission, I've come to the conclusion that the  
9 Commission and its staff is quite a dedicated group of people  
10 who really make a great effort to further those objectives on a  
11 rather small budget.

12 I was personally flattered to be appointed to this  
13 important Commission, and I would appreciate your support of my  
14 confirmation.

15 SENATOR PETRIS: Thank you.

16 I've got another problem. I have to leave again for  
17 just a few minutes to see some people upstairs. Can we take a  
18 break?

19 SENATOR BEVERLY: Another recess?

20 SENATOR PETRIS: Yes, unfortunately, but I have some  
21 questions I want to ask, and I think maybe the other Members do,  
22 too.

23 [Thereupon a brief recess was taken.]

24 SENATOR PETRIS: The meeting will come to order.

25 We just finished your statement. Since we're  
26 hearing you together, will you make your statement, Mr. Madrid,  
27 and then we'll ask you both questions.  
28



1 MR. MADRID: Thank you, Mr. Chairman.

2 For the record, my name is Arthur Madrid. I reside  
3 in La Mesa, California, which is in east San Diego County.

4 Equal opportunity, and equal housing, and good will,  
5 and harmonious relationships between all the peoples of  
6 California has always been a keen interest of mine, and to that  
7 end, I have participated in a variety of activities as a  
8 volunteer and as a professional. For example, I served a number  
9 of years on the Human Relations Commission for San Diego County.  
10 I was the Chair and served for about four years on the Human  
11 Relations Commission for the City of La Mesa, which is where I  
12 reside. I also served on the Heartland Human Relations  
13 Commission, which addressed a variety of issues dealing with  
14 discrimination of all matters. And more importantly, some 20  
15 years ago, I was one of the charter founding members of an  
16 organization in San Diego County that's considered to be the  
17 best social service organization for Hispanics, it's called the  
18 Chicano Federation.

19 I think one of the concerns that we have is that  
20 discrimination, whatever the degree is, is a great imposition  
21 not only to those individuals being affected, but also to the  
22 whole State of California. And I think what the Commission is  
23 doing at this point is addressing to the best of their ability  
24 these various issues. They're very complex, and they're very  
25 complicated.

26 I was appointed, and I've been in office since  
27 January of this year. I've participated in the various pieces  
28





1 of legislation in terms of hearings that have occurred.

2 And I feel that perhaps the experience that I bring  
3 would certainly add a dimension that would be essential and,  
4 hopefully, productive to this Commission.

5 Therefore, I ask that you support my confirmation.

6 SENATOR PETRIS: Do we have any comments or questions  
7 from the Members of either nominee?

8 If not, I'll have to ask a couple. I'll try to make  
9 them as quick as I can. We're in bad shape o time today.

10 I've been very concerned about the problem of sexual  
11 harassment in the workplace. It's reached a terribly degrading  
12 level with a lot of horror stories. Now, that's in your  
13 bailiwick.

14 As I indicated earlier, I carried legislation to  
15 correct it and didn't succeed, and Senator Bergeson has tried  
16 twice, and she hasn't succeeded.

17 I want to cite a couple of the cases. The issue is  
18 whether the Commission has statutory authority to award damages,  
19 either compensatory or punitive. The court knocked both of them  
20 out, as I recall.

21 So, the court says to us: put it in a statute. And  
22 we've been trying. Senator Bergeson and I've been trying. We  
23 just can't seem to get there.

24 Here's a case involving a Black female secretary who  
25 was sexually harassed by her supervisor, the dean of the school  
26 that she worked in -- in fact, it's in my county -- for six  
27 months. The Commission awarded \$20,000 in compensatory damages  
28



1 for emotional injury. Because there was no back pay at stake in  
2 this case -- and there never is. They just quit and leave, you  
3 know, or they hang on. They get paid, but they also get the  
4 harassment.

5 The effect of the Peralda decision is that the  
6 complainant will receive no monetary remedy for the harassment.  
7 That's case number one.

8 Here's one involving a restaurant in my county. This  
9 is unpleasant, but I'm so infuriated by this when we run into a  
10 stone wall, that I'd like to get your reaction, and I want to  
11 get your help if you agree with me.

12 The Governor appointed you. You have some connection  
13 with the Governor. I'd like you to talk to the man, okay, and  
14 maybe I'll send you these.

15 Four complainants, all waitresses, were sexually  
16 harassed by three male owners of a restaurant:

17 "They slapped, pinched, and grabbed  
18 the women's breasts and buttocks  
19 continually. One of them lifted the  
20 skirt of one of the women with a  
21 loaf of French bread and tried to  
22 put it between her legs. They would  
23 shape hamburger meat in the form of  
24 a penis and testicles and ask the  
25 women if they were big enough. One  
26 of the men pinned one of the  
27 complainants to the ice machine,  
28



1                   telling her that he wanted to have  
2                   sex with her. Another tried to  
3                   force one of the women to have oral  
4                   sex with him, and she felt forced to  
5                   quit her job."

6                   So, they filed their claim, okay? Award: \$5,000  
7 each for three of the women, and 30,000 for the fourth one.

8                   The awards are now unenforceable. Personally, I  
9 think those awards are crummy in amount, to be subjected to  
10 that. I mean, if that happened to a man, the man would have  
11 killed the assailant. A lot of men would have.

12                   Nothing happens. They go through the torment and  
13 delay of the process, and they finally get an award.

14                   The Supreme Court says the Commission has no  
15 authority to give this award. It's not in the statute. So  
16 they have nothing. And there's no back pay, where you have a  
17 case in other kinds of employment grievances, where the  
18 employee is entitled to back pay. In this case, there's no  
19 back pay involved, so they don't get anything.

20                   There's three or four others of equally degrading  
21 content.

22                   Now, my request is -- and I'll send you these -- if  
23 you agree that this is a terrible situation and has to stop,  
24 and that the complainants, employees, ought to be able to come  
25 before your Commission and file their grievances, and get  
26 just relief, or else go to court -- the whole object of the  
27 Commission was to avoid a lot of court fights. Everybody  
28





1 agrees to that. The expense and delay and clogging up of the  
2 courts, this is what it was for. And they're not getting  
3 satisfaction there.

4 So, I would like the Governor to review this  
5 problem and maybe change his mind on this kind of legislation.  
6 Hopefully, he'll not only sign the bill, but he will make some  
7 public statement supporting it.

8 I don't know whether Senator Bergeson is going to  
9 try it again or what. I don't know if there's any bill pending  
10 right now, but there's always next year.

11 Are you familiar with the background in these  
12 cases, or did these all happen --

13 MS. BEEBE: These all happened before, I think,  
14 either Art or I were appointed, but we are familiar with them  
15 and the damages.

16 SENATOR PETRIS: What's your reaction?

17 MS. BEEBE: Well, I guess I would say, speaking for  
18 myself, I know the Commission has in the past endorsed specific  
19 damages legislation. I believe the Commission and I personally  
20 am in favor of damages legislation.

21 I believe the Governor has also endorsed the  
22 current Bergeson bill, which I think is in committee. I guess  
23 we're all hopeful that there can be some resolution of the  
24 damages issue.

25 I think there is a real realization that the  
26 Commission doesn't have much power without the ability to award  
27 some damages. I would hope you keep trying this year.



1           SENATOR PETRIS: He voted for similar legislation  
2 when he was in the U.S. Senate, not exactly the same, but same  
3 general idea.

4           Now you're saying he is in favor of the current  
5 bill? Because last year, he vetoed Senator Bergeson's 827.

6           MS. BEEBE: He vetoed 827 last year.

7           It's my understanding that Senator Bergeson's bill  
8 this year contains some step caps that are sort of modeled  
9 after Title 7, which the Governor thought was acceptable, and  
10 they do have a bill.

11          SENATOR PETRIS: Yes, one of the issues was putting  
12 a cap on the amount, and so forth, which in the beginning,  
13 Senator Bergeson thought was unacceptable. It was just too  
14 darn low; it wasn't worth the effort. Might as well go to  
15 court and get a much bigger verdict from a jury.

16          And that's the reason the Commissioners, all  
17 appointed by Deukmejian at that time, believed it would be  
18 better to beef up the Commission, give them a right to grant  
19 some damages. Otherwise, the business community would be  
20 subject -- those of the bad guys within the community. I'm not  
21 saying the whole community. A very, very tiny percentage --  
22 would be subject to much bigger judgments than they would get  
23 in a Commission.

24          Okay, I've had my say.

25          Any questions? Hear a motion?

26          SENATOR BEVERLY: Move individually?

27          SENATOR PETRIS: Yes.  
28



1           SENATOR BEVERLY: Move approval of the nomination  
2 of Lydia Beebe.

3           SENATOR PETRIS: Excuse me, I didn't ask if there  
4 are any witnesses to testify either for or against.

5           Okay, we have a motion for Ms. Beebe. Call the  
6 roll.

7           SECRETARY WEBB: Senator Beverly.

8           SENATOR BEVERLY: Aye.

9           SECRETARY WEBB: Beverly Aye.

10          Senator Mello.

11          SENATOR MELLO: Aye.

12          SECRETARY WEBB: Mello Aye.

13          Senator Petris.

14          SENATOR PETRIS: Aye.

15          SECRETARY WEBB: Petris Aye.

16          Senator Craven. Senator Roberti.

17          Three to zero.

18          SENATOR PETRIS: Okay, that's recommended for  
19 confirmation.

20          Congratulations.

21          SENATOR BEVERLY: Same motion on Mr. Madrid.

22          SENATOR PETRIS: Same motion on Mr. Madrid. Call  
23 the roll.

24          SECRETARY WEBB: Senator Beverly.

25          SENATOR BEVERLY: Aye.

26          SECRETARY WEBB: Beverly Aye.

27          Senator Mello.  
28





1 SENATOR MELLO: Aye.

2 SECRETARY WEBB: Mello Aye.

3 Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris Aye.

6 Senator Craven. • Senator Roberti

7 Three to zero.

8 SENATOR PETRIS: That's approved also.

9 Good luck to both of you. Your confirmation will  
10 be done on the Floor. If they follow our recommendation,  
11 you're in officially.

12 MR. MADRID: Thank you very much.

13 MS. BEEBE: Thank you.

14 [Thereupon this portion of the  
15 Senate Rules Committee hearing  
16 was terminated at approximately  
17 4:00 P.M.]

18 --oo0oo--  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28




CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 21<sup>st</sup> day of May, 1992.

  
EVELYN J. MIZAK  
Shorthand Reporter





**200-R**

Additional copies of this publication may be purchased for \$4.75 per copy **plus current California sales tax.**

Senate Publications  
1100 J Street, B-15  
Sacramento, CA 95814

Make checks payable to SENATE RULES COMMITTEE.

**Please include Senate Publication Number 200-R when ordering.**



500  
29  
5/27/92  
10.21

HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 27, 1992  
1:55 P.M.

DOCUMENTS DEPT.

JUL 18 1992

RECEIVED  
JUL 18 1992



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SENATE RULES COMMITTEE  
STATE OF CALIFORNIA

HEARING

STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 27, 1992  
1:55 P.M.

Reported by:

Evelyn J. Mizak  
Shorthand Reporter



APPEARANCESMEMBERS PRESENT

SENATOR NICHOLAS PETRIS, Acting Chair

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

STEFAN L. MANOLAKAS, Member  
California Horse Racing Board

DENNIS HUTCHESON, Executive Secretary  
California Horse Racing Board

CHONG W. HA, Director  
Stephen P. Teale Data Center

SAM A. EGIGIAN, Member  
California Integrated Waste Management Board

DENISE DELMATIER  
The Gualco Group for Norcal Waste Systems, Inc.

PAUL M. RELIS, Member  
California Integrated Waste Management Board

JOHN L. RODRIGUEZ, Chief Deputy Director  
Department of Health Services

DENNIS FLATT, Legislative Advocate  
Kaiser Permanente





APPEARANCES (CONTINUED)

TERRI GIRSH  
California Children's Hospital Association

FRED SHANBOUR, Chair  
California Medical Assistance Commission

JUDITH WOLER  
California Reproductive Health Association

MILTON G. GORDON, Rules Committee Appointee  
California Medical Assistance Commission

DEBORAH KELCH  
California Association of HMOs

THERESA MENEFEE, Former Employee  
Department of Health Services

ARNOLDO TORRES, Legislative Advocate  
California Hispanic Health Care Association



INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
STEFAN L. MANOLAKAS, Member California Horse Racing Board	1
Background and Experience	1
Questions by SENATOR PETRIS re:	
Effort to Eliminate Health Plan for 80 Employees	2
Resolution of Issue	3
Unnecessary for Board to Intervene	3
Machines Vs. Parimutual Clerks	4
Procedure for Processing Labor Grievances	4
Request by SENATOR PETRIS for Nominee to Review Condition, Situation, and Statute Regarding Employees	5
Questions by SENATOR MELLO re:	
Number of Employees under CHRB's Jurisdiction	5
Ethnic Make-up of Employees	6
Letter from SENATOR TORRES regarding Ethnic Diversity in CHRB	7
Total Number of Staff under CHRB Jurisdiction and Ethnic Percentages	7
Response by DENNIS HUTCHESON, Executive Secretary, California Horse Racing Board	7
Request by SENATOR MELLO to Put Over Confirmation for One Week so Committee Can Access Information	8
Discussion	8
Committee Action	9



1		
2	CHONG W. HA, Director	
3	Stephen P. Teale Data Center	10
4	Background and Experience	10
5	Questions by SENATOR PETRIS re:	
6	Tenure at Data Center	11
7	Billing Method	11
8	Business, Transportation and Housing Agency not Billed for Full Costs	12
9	Keeping Up with Technological Advances	12
10	Availability of New Equipment	13
11	Reason for Being Behind	13
12	Answerability	14
13	Motion to Confirm	14
14	Committee Action	15
15	SAM A. EGIGIAN, Member	
16	California Integrated Waste Management Board	15
17	Background and Experience	15
18	Crisis in Solid Waste Industry: Landfills	15
19	Questions by SENATOR PETRIS re:	
20	Markets for Recycling	17
21	Means of Alerting Communities about Need to Start Siting Landfills	18
22	Means of Taking Materials out of Waste Stream for Recycling	19
23	Should Curb-side Recycling Be Statewide Requirement	19
24		
25	<u>Witness in Support:</u>	
26	DENISE DELMATIER	
27	Gualco Group	
28	Norcal Waste Systems, Inc.	20





1		
2	Questions by SENATOR PETRIS re:	
3	State-mandated Local Recycling	21
4	Motion to Confirm	21
5	Committee Action	22
6	PAUL M. RELIS, Member	
7	California Integrated Waste Management Board	22
8	Background and Experience	22
9	Community Environmental Council	22
10	California Resource Recovery Association	23
11	Resource Center	23
12	Service on Senate Task Force	24
13	Trip to Japan to Determine Secondary Material Demand	24
14	Questions by SENATOR PETRIS re:	
15	Japan Trip	26
16	Possibility of Charging Residents by Bulk	26
17	Incineration	27
18	Motion to Confirm	28
19	Committee Action	29
20	JOHN L. RODRIGUEZ, Deputy Director	
21	Department of Health Services	29
22	Recommendation by SENATOR PETRIS to Put Over Confirmation for One Week	29
23	Background and Experience	30
24	Management Philosophy	31
25	Questions by SENATOR MELLO re:	
26	Reform of Medi-Cal Billing	32
27	Number of Opposition Letters from California Alliance for the Mentally Ill	34
28		



1		
2	Request to Go through Letters in Opposition	
3	and Respond to Them Next Week	37
4	Need to Give High Priority to Uniform Billing	37
5	Promulgation of Regulations to Allow	
6	Investigational Drugs and Therapies	38
7	Obligation to Follow Law	39
8	Department's Opposition to AB 1625	
9	in 1989	39
10	Determination of Medical Necessity	41
11	Prior Authorization Leaves Patients	
12	in Limbo	42
13	Obligation to Give Medical Care, Budget or	
14	No Budget	43
15	Case of Elderly Woman Needing Dentures	44
16	Questions by SENATOR BEVERLY re:	
17	Reference to SB 127 (Russell)	44
18	<u>Witnesses in Support:</u>	
19	DENNIS FLATT	
20	Kaiser Permanente	45
21	TERRI GIRSH	
22	California Association of Children's Hospitals	46
23	FRED SHANBOUR, Chair	
24	California Medical Assistance Commission	47
25	JUDITH WOLEN	
26	California Reproductive Health Association	47
27	MILTON G. GORDON, Rules Committee Appointee	
28	California Medical Assistance Commission	48
	DEBORAH KELCH	
	California Association of HMOs	49
	<u>Witness in Opposition:</u>	
	THERESA MENEFEY, Former Employee	
	Department of Health Services	50



1		
2	Discrimination Issue	50
3	Training for Management Staff as	
4	Part of Settlement Agreement	50
5	Experience while in Medi-Cal Eligibility	
6	Branch	51
7	Discriminatory Action at FIMD regarding	
8	Watermelon and Note	51
9	Branch Chiefs Using State Time and Funds	
10	to Conduct Personal Business	51
11	Husbands and Wives Employed in Same	
12	Divisions	51
13	Questions by SENATOR MELLO re:	
14	Unsigned Letter	52
15	Department's Time Frame in Referencing	
16	Discrimination Complaints	53
17	SPB's Data on Percentage of Ethnic Groups	
18	Involved in Adverse Actions in Department	53
19	Questions by SENATOR PETRIS re:	
20	Time Lag between Signing of Settlement	
21	Agreement and Startup of Training	54
22	Conclusion by MR. RODRIGUEZ	54
23	Intolerance for Discriminatory Acts	54
24	Need for Pro-active Measures	54
25	Reason for Delay in Training	55
26	Questions by SENATOR PETRIS re:	
27	Who Does Management Training in Discrimination	56
28	Signs of Improvement	56
	<u>Witness with Concerns:</u>	
	ARNOLDO TORRES, Legislative Advocate	
	California Hispanic Health Care Association	58
	Accessibility of Nominee	58





1		
2	Department Inherited a Bad System	59
3	Lack of Parity Historical Problem	
4	with Department	59
5	Need to Create Comfortable Environment for	
6	Employees in Department	60
7	Governor's Lack of Concern	61
8	Need to Prioritize Affirmative Action	61
9	Request that Department of Health Services	
10	Submit Plan of Action for Dealing with	
11	Inherited Problem of Discrimination	62
12	State Cannot Afford Expensive Discrimination	
13	Lawsuits	63
14	Belief in Nominee's Ability	63
15	Question by SENATOR MELLO re:	
16	Timing of DR. COYE's Confirmation	
17	on Senate Floor	64
18	Request for Bipartisan Letter from Rules	
19	Committee to DR. COYE	64
20	Willingness to Comment and Make	
21	Suggestions on Letter	65
22	DR. COYE's Nomination Not Being Held Up	
23	for Personal Reasons	65
24	Question by SENATOR BEVERLY re:	
25	Position on RODRIGUEZ Confirmation	65
26	Statements by SENATOR PETRIS re:	
27	Newspaper Comment on COYE's Nomination	66
28	Committee Action to Hold Nominatio	66
	Termination of Proceedings	67
	Certificate of Reporter	68



## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

SENATOR PETRIS: Now we have appointees of the Governor. We have one that was put over from prior meetings, so let's start with number two, Mr. Manolakas, Horse Racing Board.

MR. MANOLAKAS: Good afternoon.

SENATOR PETRIS: Good afternoon, Mr. Manolakas. Our custom is to ask the nominee why he or she feels that he or she is qualified to serve in this capacity. Do you want to tell us?

MR. MANOLAKAS: Well, I think a couple of the factors that may have tilted in my favor, first, there is -- there are presently no attorneys besides myself presently sitting on the CHRB, and a significant portion of our time is spent interpreting, or in some manner enforcing statutes. And I think that that probably --

SENATOR BEVERLY: Would you move that mike closer.

MR. MANOLAKAS: Is that better?

SENATOR PETRIS: Yes.

MR. MANOLAKAS: I was saying that having a legal background, perhaps, helps me in interpreting and enforcing some of the statutes that we have to do on a monthly basis and often times more often.

In addition, there was no representation, other than one other Commissioner, from the Northern California region, and I believe that also helps balance between the northern and the -- the northern part of the state and the southern part of the state.



1                   SENATOR PETRIS: Are you the only one at the present  
2 time?

3                   MR. MANOLAKAS: No, there's one other one.

4                   SENATOR PETRIS: All right. Any questions from any  
5 of the Members?

6                   Is there any opposition? Anyone here to testify in  
7 support?

8                   I have a question. I've had a problem for years with  
9 the Board, and I ask all the nominees, but none of them has  
10 changed the policies, so I'm going to ask you.

11                  MR. MANOLAKAS: All right.

12                  SENATOR PETRIS: I think the history of individual  
13 tracks and the Board itself with respect to labor relations  
14 leaves a lot to be desired. There's a beef going on now at  
15 Golden Gate -- it may have been resolved -- where they're moving  
16 to eliminate the health plan for 80 percent of the employees, at  
17 a time when we're scrambling to see what we can do about health  
18 plans for, you know, everybody in the state.

19                  It took them years to get that health plan in their  
20 package. They gave up pay raises and so forth to get the health  
21 plan. Now we're faced -- or at least the parimutual clerks are  
22 facing elimination of the health plan for 80 percent of them.

23                  I think that's an outrageous demand. This is a  
24 controlled industry. They're guaranteed a certain amount of  
25 money, and they pay a certain amount to the state. I don't know  
26 how strong that guarantee is, but they're in a preferred  
27 position.  
28





1 I think it's unconscionable that we permit that kind  
2 of conduct on the part of a track.

3  
4 Has this come to your attention at all yet as a  
5 Member of the Board?

6 MR. MANOLAKAS: Senator Petris, about two weeks ago,  
7 there was a labor dispute. They called in an emergency meeting  
8 down in Southern California. That has since been resolved. I  
9 know that there were a number of outstanding issues. I'm sure  
10 one of them was probably the health care benefits.

11 The Board was being called upon not to decide whether  
12 that particular issue was fair or unfair, but rather to  
13 interpret a statute that you may be familiar with, and it talked  
14 about the ability of the unions to insist upon a contract prior  
15 to any satellite wagering facilities to be open.

16 Prior to that emergency meeting, the issue was  
17 resolved and the labor dispute was put behind everybody, so we  
18 were never called upon to --

19 SENATOR PETRIS: Was that a statewide thing?

20 MR. MANOLAKAS: I believe so, yes.

21 SENATOR PETRIS: How was that resolved?

22 MR. MANOLAKAS: It was resolved in this particular  
23 instance with the track owner and the union getting together and  
24 resolving the dispute without having the Board intervene.

25 SENATOR PETRIS: You don't know which way it went?

26 MR. MANOLAKAS: No, I don't. I'm assuming it was  
27 satisfactory to both parties. Or, both parties were a little  
28 bit upset, which is usually the way things are resolved.



1           SENATOR PETRIS: Is that binding on all the tracks?  
2 Is this a statewide effort?

3           MR. MANOLAKAS: There is another issue that I think  
4 is presently occurring that I'm aware of with regard to, I  
5 believe it's 280, that has to deal with machines versus having  
6 parimutual clerks take \$2 bets. And that has been -- is that  
7 the issue that you're talking about?

8           SENATOR PETRIS: That comes up every once in a while  
9 periodically over the years.

10          MR. MANOLAKAS: That's come up before the Board.

11          SENATOR PETRIS: Which track is that? Is that all of  
12 them?

13          MR. MANOLAKAS: Well, this -- it was in Northern --  
14 it was focused on Northern California at the time it came before  
15 us. And I believe at the time it came before the Board, it was  
16 our decision to allow the management and the unions to work that  
17 out between themselves, as opposed to intervening.

18          Other than that, there have been to my knowledge no  
19 other labor issues that have been before us so long as I've been  
20 on the Board.

21          SENATOR PETRIS: What is the procedure for processing  
22 a labor claim, let's say, of an individual employee, not just a  
23 union thing as a whole? The Board doesn't have anything  
24 equivalent to the ALRB or the NLRB, or any of those. Where does  
25 a individual go, other than to the shop steward representing the  
26 union?

27          MR. MANOLAKAS: I'm afraid I'm a bit at a  
28



1 disadvantage, since none have come before us, no labor disputes,  
2 other than the ones I've mentioned that have come before me.

3 I'm not certain of the procedure. I would imagine it  
4 would be taken up with the Executive Secretary, Mr. Hutcheson,  
5 and it would be handled through the CHRB administrative staff.

6 SENATOR PETRIS: Well, I, for one, would like you to  
7 review the condition and the situation, including the statute,  
8 with respect to the employees.

9 My impression over a period of years, because there  
10 is a track in my district, is very bad. I would appreciate it  
11 if you could, as a lawyer, check it out and get back to me,  
12 particularly if you have any suggestions on improving the  
13 situation.

14 I guess I can't ask you to do more than that.

15 MR. MANOLAKAS: I certainly will.

16 SENATOR PETRIS: Except to demand fairness in all  
17 disputes for both sides.

18 MR. MANOLAKAS: I try and do that.

19 SENATOR PETRIS: Does anyone else have a question?  
20 Senator Mello.

21 SENATOR MELLO: In that regard, about how many  
22 employees are under the jurisdiction of the Horse Racing Board  
23 that you hire?

24 MR. MANOLAKAS: The CHRB doesn't -- the Board in  
25 itself doesn't hire anybody directly. It's designated to the  
26 Executive Secretary.

27 We at times have contracts brought before us for  
28





1 outside consultants. For instance --

2 SENATOR MELLO: Do you have stewards?

3 MR. MANOLAKAS: We have stewards. There's a Steward  
4 Committee that makes a recommendation to the Board, and again --

5 SENATOR MELLO: There's other staff that help and  
6 assist the Horse Racing Board; is that correct?

7 MR. MANOLAKAS: That's correct, under the Executive  
8 Secretary.

9 SENATOR MELLO: Do you know what the total number  
10 might be?

11 MR. MANOLAKAS: I'm sorry?

12 SENATOR MELLO: Do you know what the total number  
13 might be?

14 MR. MANOLAKAS: Of stewards or overall employees?

15 SENATOR MELLO: Overall staff that are either  
16 directly or indirectly come under the jurisdiction of the Horse  
17 Racing Board?

18 MR. MANOLAKAS: I do not, but Mr. Hutcheson is here  
19 today, if you would like to know the answer to that question.  
20 I'm sure he has the answer.

21 SENATOR MELLO: What I'm more concerned about is, as  
22 I recall, a former person, a member, up here that was up for  
23 confirmation, the affirmative action or the ethnic make-up of  
24 the employees has been about zero as far as I recall. I just  
25 wanted to know whether that's improved any.

26 The Board does not reach out into hiring people from  
27 ethnic populations.  
28



1 MR. MANOLAKAS: You know, I was aware of a letter  
2 from Senator Torres that came across my desk, I think, two  
3 months ago. And the questions were posed regarding the ethnic  
4 diversity of both the CHRB staff, and the people under them, as  
5 well as the stewards.

6 And my recollection in that letter is that we are  
7 meeting or exceeding the requirements currently imposed by --

8 SENATOR MELLO: Is the person that you have here  
9 maybe aware of those numbers?

10 MR. MANOLAKAS: Certainly.

11 SENATOR MELLO: We have, the Rules Committee and the  
12 state, does have a policy on affirmative action and employing  
13 people from different ethnic backgrounds to help balance out  
14 those populations that are the make-up of California.

15 My real question is, what is the total extent of the  
16 staff that are under the jurisdiction, either directly or  
17 indirectly, and what percentage of them are from Hispanics,  
18 Black, Native Americans, and other populations?

19 MR. HUTCHESON: Senator Mello, Members of the  
20 Committee, Dennis Hutcheson. I'm the Executive Secretary of the  
21 Board.

22 We have 60 civil service employees, and roughly 15-20  
23 working stewards and official veterinarians.

24 The Assistant Executive Secretary is Japanese. The  
25 Assistant Secretary for Security and Enforcement is Hispanic.  
26 The Chief Investigator is Hispanic.

27 Of 60 civil service employees, I would say that  
28



1 probably 30-40 percent are Black or Hispanic. We have two  
2 Filipino employees.

3 So, roughly 30-40 percent of our staff, civil service  
4 staff, I think, are Hispanic, Black, or other minority groups.

5 The stewards are not civil service employees.  
6 They're personal sort of contractors. And I admit that we have  
7 a problem as far as outreaching to minority groups in the  
8 stewards area. We have, of the stewards that are working, two  
9 females are -- work at a thoroughbred tracks; one's working at a  
10 fair track; and two others are working at fair and major meets.

11 SENATOR MELLO: Would it be possible -- I think  
12 Senator Petris asked some questions also. Your appointment date  
13 goes into August.

14 I'm not trying to hold it up or anything. I think,  
15 from my point, I think the Rules Committee should have this  
16 information, both Senator Petris's questions and mine, regarding  
17 your employees and the number in each category, both exempt and  
18 civil service, so we can have it as a matter of record for the  
19 Rules Committee.

20 MR. HUTCHESON: I provided that to Senator Torres  
21 upon his request. I'll make a copy of my response available to  
22 the Committee Members.

23 SENATOR MELLO: Mr. Chairman, would that be  
24 agreeable, then, to put it over for one week or two weeks?

25 SENATOR PETRIS: Yes, that's agreeable to me.

26 There are people here who want to testify. May I ask  
27 how many are here to testify? Excuse me, there weren't any  
28





1 before.

2 You're asking for another week.

3 What is your time, August?

4 MS. MICHEL: August 14th.

5 SENATOR PETRIS: We have plenty of time.

6 MR. MANOLAKAS: So, you'd like me to come back then?

7 SENATOR PETRIS: Yes. That's a normal request of any  
8 Member that wants more information and asks that it go over a  
9 week. We always do it.

10 SENATOR BEVERLY: That's what I was going to comment  
11 on.

12 SENATOR PETRIS: Yes, Senator Beverly.

13 SENATOR BEVERLY: At the request of any Member of the  
14 Rules Committee, we would hold the matter a week.

15 You shouldn't infer from that that there's anything  
16 negative, necessarily.

17 MR. MANOLAKAS: No, I'm not. It's just a matter of  
18 time.

19 Thank you.

20 SENATOR PETRIS: He's a busy lawyer and developer,  
21 and so forth, and it's costing him a lot of money to come in  
22 here, but we'll ask you to give up that money one more time and  
23 come back next week.

24 MR. MANOLAKAS: I'd be happy to.

25 SENATOR PETRIS: Fine, thank you.

26 All right, out next person is Mr. Chong W. Ha,  
27 Director of the Stephen P. Teale Data Center.  
28



1           Mr. Ha, we'll ask you the same question. Convince us  
2 why we should support your nomination.

3           MR. HA: Yes, Chairman Petris and Members of the  
4 Rules Committee.

5           It's quite an honor for me today to appear before you  
6 for my confirmation as Director of the Stephen P. Teale Data  
7 Center.

8           In the last 28 years I spent in the private sector in  
9 the information technology business. The companies include:  
10 United California Bank, Transamerica Corporation, Atlantic  
11 Richfield Company, First Interstate Bank, Ticor Title Insurance  
12 Company, and MCA Universal Studios.

13           The last 14 years of those 28 years I held a senior  
14 management position. At First Interstate Bank, I managed both  
15 Los Angeles and San Francisco data center for the bank. I was  
16 there for seven years. At Ticor Title Insurance Company, I  
17 was Vice President in charge of MIS. I was responsible for  
18 application development, data center management, and the  
19 telecommunications department. I was there for over six years.

20           At MCA Universal Studios, I was responsible for  
21 managing MCA data center. I was there for three months before  
22 my appointment to the current position.

23           I went to UCLA for my undergraduate degree in  
24 Economics. And while I was with Interstate Bank, I attended  
25 Executive Management Program at Management Center at Claremont  
26 Graduate School and received my Management Degree -- Master's  
27 Degree in Management.  
28



1 I was active in the Asian community in Los Angeles.  
2 I was on the Board of Asian Pacific American Legal Center,  
3 Korean Youth Center, and also Asian Pacific Alumni of UCLA.

4 I'm married and have two -- two daughters. One is a  
5 graduate of UCLA and working for a bank in Los Angeles, and my  
6 younger daughter is a junior at UCLA.

7 Thank you, gentlemen.

8 SENATOR PETRIS: Any questions?

9 Anyone in the audience desire to testify either in  
10 favor or in opposition to this nomination?

11 Okay, I have a question. How long have you been  
12 there at the Data Center?

13 MR. HA: Last eight months.

14 SENATOR PETRIS: Eight months?

15 MR. HA: Yes.

16 SENATOR PETRIS: That's operated like a business.  
17 You have state agencies that have need for your services, and  
18 you provide that service --

19 MR. HA: Yes.

20 SENATOR PETRIS: -- and you bill them?

21 MR. HA: That's correct.

22 SENATOR PETRIS: How is that billing determined? How  
23 sets the rate?

24 MR. HA: We set the rate based on the expenditure for  
25 the particular fiscal year, and we try to recover just the cost.

26 SENATOR PETRIS: Are the clients pretty good in  
27 paying their bills?  
28





1 MR. HA: Yes, they are.

2 SENATOR PETRIS: I've been told that one of the  
3 agencies wasn't billed for some pretty extensive work. Are you  
4 familiar with that?

5 MR. HA: It wasn't, sir?

6 SENATOR PETRIS: I understand that in one service  
7 involving computer equipment and support to the Business,  
8 Transportation and Housing Agency, they weren't billed for the  
9 full costs. So, that means that to the extent that you don't  
10 get the money from that particular client, it kind of shifts the  
11 burden to the other clients.

12 Do you recall any instance since you've been there  
13 where the billing wasn't 100 percent?

14 MR. HA: As far as I know, we are billing to the  
15 agency, and I have no knowledge of what happened in the past.

16 SENATOR PETRIS: So, are you saying that you always  
17 bill each client for the full amount?

18 MR. HA: Yes, that is correct.

19 SENATOR PETRIS: And it's always been done during the  
20 time you've been there?

21 MR. HA: Yes. That's the practice.

22 SENATOR PETRIS: How do you keep up with the  
23 advancing technology in data processing?

24 MR. HA: Well, I think I'm very fortunate that I went  
25 through every facility of data processing in the last 28 years.  
26 And as you may recall, I started as an operator in 1964, when I  
27 was going to school. So, I spent 28 years, as I told you.  
28



1           SENATOR PETRIS: So you know the field?

2           MR. HA: I read all the technical journals and try to  
3 keep up with the technology.

4           SENATOR PETRIS: The little reading I've done  
5 indicates that the new machines become obsolete very fast --

6           MR. HA: Yes.

7           SENATOR PETRIS: -- and you have to really stay on  
8 top of it.

9           MR. HA: Yes, it is.

10          SENATOR PETRIS: Do you always get the new stuff, and  
11 do you have a budget that permits you to do that?

12          MR. HA: We are not quite getting the new stuff. I  
13 think we are a little behind in that, but we're trying to keep  
14 up with the technology.

15          SENATOR PETRIS: You are not behind because of the  
16 money problem?

17          MR. HA: I don't think that was the problem in the  
18 past.

19          SENATOR PETRIS: What's causing you to be behind now?  
20 Just the work load?

21          MR. HA: Well, it's a matter of objectives that the  
22 previous staff has set. And as you know, the technology's  
23 changing, and the computer is getting smaller and smaller. And  
24 one of the -- one of the dilemma that everybody has in -- and  
25 also in the private sector is that the application is reaching  
26 an old, old program. So, you take a tremendous investment in  
27 combining those programs. So, you really have to set the right  
28



1 direction to achieve that goal.

2 SENATOR PETRIS: Does the Data Center also have a  
3 board? Is there a committee or a board of directors that you  
4 answer to?

5 MR. HA: No, we don't have.

6 SENATOR PETRIS: Who's your boss?

7 MR. HA: My boss is the Secretary of Business,  
8 Transportation and Housing.

9 SENATOR PETRIS: You report directly to the  
10 Secretary.

11 MR. HA: Yes.

12 SENATOR PETRIS: Any other questions?

13 No testimony from the audience, do I hear a motion?

14 SENATOR BEVERLY: Move the approval of the  
15 nomination.

16 SENATOR PETRIS: Senator Beverly moves approval.  
17 Call the roll.

18 SECRETARY WEBB: Senator Beverly.

19 SENATOR BEVERLY: Aye.

20 SECRETARY WEBB: Beverly Aye.

21 Senator Mello.

22 SENATOR MELLO: Aye.

23 SECRETARY WEBB: Mello Aye.

24 Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Petris Aye.

27 Senator Craven. Senator Roberti.  
28





1 Three to zero.

2 SENATOR PETRIS: Okay, congratulations. Your  
3 confirmation will be reported, recommend confirmation, to the  
4 Floor. You still have another vote to go.

5 MR. HA: Thank you very much.

6 SENATOR PETRIS: Next we have Mr. Egigian, Integrated  
7 Waste Management Board.

8 MR. EGIGIAN: How do you do, sir.

9 SENATOR PETRIS: Is this your second time around?

10 MR. EGIGIAN: Yes, sir. I've been on the Board for  
11 about 18 months, and this is my second appointment.

12 SENATOR PETRIS: So, you did a partial on the first  
13 go-around, partial term.

14 MR. EGIGIAN: Yes, sir.

15 SENATOR PETRIS: Do you want to refresh our memory  
16 why we should support you?

17 MR. EGIGIAN: Certainly.

18 I'm a person that has 40 years' experience in the  
19 waste industry. AB 939 has a slot in there for somebody from  
20 the waste industry.

21 I have the support of the industry in all parts of  
22 the state. I was asked to go into this position, and at their  
23 pleasure, I did so.

24 I have been involved in many areas of this particular  
25 business. And at the particular time, inasmuch as our plans  
26 are coming in, we find that there's a great crisis in the solid  
27 waste industry as far as landfills go. And I've been spending a  
28



1 lot of my time recently in that area, and we find out that 40  
2 percent of the population live in -- in California, live in an  
3 area that has less than five years of capacity left in their  
4 landfills. And our experience shows us that landfills take from  
5 11-14 years to site and to permit. So therefore, I feel that  
6 it's important that the elected officials and the people in  
7 these various communities, whether they're private citizens, or  
8 whether they're people that are trying to start these landfills,  
9 have a better idea on what to do and how to do it.

10  
11 We've -- we're in the process of planning an  
12 information type of a program that will enlighten elected  
13 officials in these communities as to what landfills are; that  
14 they're not the old dumps of 40 years ago. These are engineered  
15 fills, and they've got liners, and they're protected, and the  
16 gas is taken out, and the leachate is taken out.

17 So, before the crisis becomes a real big problem, we  
18 are -- and I've got the support of a lot of the Board members to  
19 go on this particular process and make sure that everybody is  
20 well aware of what's happening.

21 I've also engaged in a direct dealing with the  
22 industry itself, and in the last several years, they've spent  
23 hundreds of millions of dollars setting up these MRFs and these  
24 facilities to recycle the goods that are coming out in the waste  
25 stream that we've been instructed to do in 939.

26 We're involved with marketing and many other projects  
27 that will make this bill actually happen. I am convinced that  
28 by 1995, we can pull out 25 percent of the material out of the



1 stream, and by the year 2000, it will be no problem to pull to  
2 50 percent.

3 The biggest problem today is the markets, and we're  
4 working on the markets. And we hope to have some success  
5 shortly. We're hearing about some large mills that want to come  
6 into the area, paper mills to process the paper, the newspaper.

7 And so, we're working in every area that we can to  
8 make sure that private, who's handled this all the time, spend  
9 their money and do these things to make sure this law becomes  
10 reality.

11 SENATOR PETRIS: What are some of the other markets,  
12 other than paper mills?

13 MR. EGIGIAN: Well, the glass market has been very  
14 poor. The waste paper has been very poor. Aluminum cans  
15 there's no problem with. Plastics, we're getting more people  
16 involved in that area.

17 So again, it depends on how the free market moves as  
18 far as these materials go. I, myself, being from private  
19 enterprise, don't want to spend all this money collecting this  
20 material and putting it in warehouses, and then six months  
21 later, running it into a landfill and paying another \$50 a ton  
22 to dispose of it.

23 So, we're trying to get a full circle going.  
24 Recycling only becomes recycling when you pull this material out  
25 of the waste stream, and it's processed, and it's reused again  
26 to manufacture something else.

27 SENATOR PETRIS: Do you have a five-year projection?  
28





1 With fourteen years to pick a site, we've got a nine-year  
2 problem there somewhere.

3 MR. EGIGIAN: At least.

4 SENATOR PETRIS: How does the Board go about alerting  
5 the various communities? Do you send out a letter to each of  
6 the communities? How do you handle that?

7 MR. EGIGIAN: The law -- we remind them of what the  
8 law says, and 939 says that every community should have a  
9 15-year capacity for landfill so they will not be short.

10 SENATOR PETRIS: The average right now is five; is  
11 that it?

12 MR. EGIGIAN: In 40 percent of the state it's five.  
13 And this is in the Southern California area, where the heavy  
14 population is, and some of it is up in this area also.

15 So, what we're hoping to do is, as soon as we can get  
16 -- well, let me back up just a minute.

17 I've been moving around the state within the  
18 industry, industry governmental groups, and I've been giving  
19 talks and showing a film that we have. You might have seen it;  
20 it was "20/20" had this film on, about a landfill in Michigan,  
21 where the city has actually profited greatly by this landfill.  
22 And the money and the revenue that has come in from it, from  
23 building a new city hall, to fire trucks, to the football teams,  
24 to the best response if you're going to have a heart attack it  
25 should be in that city because they've got the best materials in  
26 their ambulances --

27 SENATOR PETRIS: Recycled materials?  
28



1           MR. EGIGIAN: No, these are brand new, but they are  
2 recycling. The material that goes into their landfill that  
3 they're making this money off of is coming in from outside of  
4 their own particular area. There's a lot of communities that  
5 are bedroom communities that don't have the room, the canyons,  
6 and whatever it takes, to have a landfill.

7           SENATOR PETRIS: How do you take stuff out of the  
8 stream? You're predicting up to 50 percent by the year 2000.

9           MR. EGIGIAN: Yes. There are several ways to do it.  
10 One is curb-side recycling. And this is where you are given by  
11 the community or the hauler plastic baskets, or bags, and you  
12 separate the plastic, and the bottles, and the aluminum cans in  
13 one of them, then you put the newspapers in another one. This  
14 is partial recycling here.

15          SENATOR PETRIS: That's local initiative.

16          MR. EGIGIAN: That's the local initiative.

17          SENATOR PETRIS: Should that be a statewide  
18 requirement?

19          MR. EGIGIAN: Well, I don't know. Some people think  
20 so. I'm not convinced as that's the best way to go.

21          SENATOR PETRIS: Why not?

22          MR. EGIGIAN: I like the idea of the MRFs. This is  
23 where you pick up the material as it has always been picked up.  
24 You put the trash out on Friday, if that's your day to pick it  
25 up, and you forget about it and it's gone.

26          Now, the MRF, all this material is dumped into this  
27 MRF. It goes through a trammel, and there's many separation  
28



1 lines that have either air separation, or flotation, or magnetic  
2 separation, and there are people on both sides of this belt, and  
3 they're -- whatever there is a market for, and whatever they  
4 want out of the stream, they're picking it out of the stream.  
5 The rest of it goes into a hopper, and it goes into the  
6 landfills.

7  
8 So, as we develop new markets for these materials,  
9 more and more of this trash can come out of the waste stream.

10 SENATOR PETRIS: Thank you.

11 Any questions by any Members?

12 Anyone here in the audience care to testify for or  
13 against?

14 MS. DELMATIER: Mr. Chairman and Members of the  
15 Committee, Denise Delmatier with the Gualco Group on behalf of  
16 Norcal Waste Systems.

17 We're here to support Mr. Egigian's reappointment to  
18 the Board. We believe that he has demonstrated a commitment to  
19 successfully implementing AB 939. He has been open to, of  
20 course, our industry as the waste industry representative, and  
21 I've seen and witnessed his openness and open door policy to  
22 local government, as well as environmental community. We  
23 believe that he has demonstrated a competence and eagerness to  
24 successfully implement this Integrated Waste Management Act.

25 SENATOR PETRIS: Would you give us your name again  
26 and the organization you represent?

27 MS. DELMATIER: Denise Delmatier on behalf of Norcal  
28 Waste Systems.





1           SENATOR PETRIS: Do you think there ought to be a  
2 state law requiring local recycling?

3           MS. DELMATIER: Well, the law requires -- mandates  
4 that local communities divert 25 percent and 50 percent by the  
5 year 2000. How they get to that 25 percent and 50 percent is  
6 left up to the local jurisdiction to individually select  
7 programs that tailors -- that is tailored to their community,  
8 best meets the needs of that individual community.

9           Some programs work well in some communities and not  
10 well in other communities, depending upon the local needs and  
11 what's already there.

12          SENATOR PETRIS: So how is it working out overall?

13          MS. DELMATIER: I -- so far, and I think the Board  
14 can attest to this, but the draft SRREs, the Source Reduction  
15 Recycling Elements, that are coming into the Board are very good  
16 at demonstrating the ability of local communities to in fact  
17 meet, if not pass, the goals of 25 percent and 50 percent.

18          I know, I happen to sit on a local solid waste  
19 advisory committee for 939, and they're estimating 70 percent  
20 diversion by the year 2000, so we're well on our way.

21          SENATOR PETRIS: We're on track?

22          MS. DELMATIER: Yeah.

23          SENATOR PETRIS: Any questions of the witness?

24          Thank you.

25          Senator Beverly moves confirmation?

26          SENATOR BEVERLY: So move.

27          SENATOR PETRIS: Call the roll.  
28



1 SECRETARY WEBB: Senator Beverly.

2 SENATOR BEVERLY: Aye.

3 SECRETARY WEBB: Beverly Aye.

4 Senator Mello.

5 SENATOR MELLO: Aye.

6 SECRETARY WEBB: Mello Aye.

7 Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Petris Aye.

10 Senator Craven. Senator Roberti.

11 Three to zero.

12 SENATOR PETRIS: We recommend your confirmation to  
13 the Floor.

14 MR. EGIGIAN: Thank you, gentlemen.

15 SENATOR PETRIS: Congratulations.

16 MR. EGIGIAN: Thank you.

17 SENATOR PETRIS: Now we have Mr. Relis also of the  
18 Waste Management Board.

19 You've heard the questions put to the others. Is  
20 this your first go-around?

21 MR. RELIS: Yes.

22 SENATOR PETRIS: Do you want to tell us why we should  
23 support your nomination?

24 MR. RELIS: Mr. Chair, Members of the Committee, by  
25 way of background, as the environmental member on the Board, I'd  
26 like to give you a brief history of my work in that regard.

27 I founded in 1970 the Community Environmental Council  
28



1 of Santa Barbara, a nonprofit environmental educational  
2 organization which I worked with for 20 years prior to coming to  
3 the Waste Board. It was active in air, water quality, energy,  
4 and land use related issues. Started the first recycling  
5 program in Santa Barbara County.

6 The Council was also the founding headquarters of the  
7 California Resource Recovery Association, a consortium of  
8 nonprofit and recycling businesses in the state. It sponsored  
9 some of the first recycling conferences in California,  
10 published the first comprehensive studies of the possibilities  
11 for recycling.

12 In 1982, I took charge of all the environmental  
13 activities of the organization I just described, including  
14 recycling operations.

15 When I was appointed by the Governor to the Waste  
16 Board, I left, as I said, a 20-year career with this  
17 organization, which employed some 50 people, and had an  
18 operating budget of about 4.5 million.

19 In 1983, I developed the Guild A Resource Center, the  
20 environmental research arm of the Council. The Center, which  
21 now serves as headquarters for this organization, is a state of  
22 the art energy efficient building. Its purpose is to bring  
23 together decision makers in the public and private sectors with  
24 environmental leaders to develop education programs, policies,  
25 and business strategies that demonstrate how environmental ad  
26 economic development objectives can be fused.

27 The policy work of the Center's had a bearing on the  
28





1 California Beverage Container Recycling and Litter Reduction  
2 Act, and the California Integrated Waste Management Act. The  
3 Center's contributions to the development of new and more  
4 environmentally responsible waste management and recycling  
5 systems, I believe, are well known around policy experts in this  
6 business, nonprofit, and governmental sectors here in California  
7 and elsewhere in the country.

8  
9 In my role as President of CEC, I authored or  
10 co-authored major policy papers on all aspects of integrated  
11 waste management, including: ways of reducing waste; the  
12 relationship between recycling, landfill, and incineration;  
13 composting; and the development of markets for secondary  
14 materials. I brought samples of that work, if you care to look  
15 at it.

16 In '88, I served as Senator Roberti's appointee to  
17 the Senate Task Force on Solid Waste Management, chaired by  
18 Senator Vuich.

19 In 1988, this organization -- I directed this  
20 conference which was the largest secondary materials market  
21 conference at that time in the country. It brought together  
22 representatives from Pacific Rim countries such as Japan and  
23 Taiwan, with our largest domestic industries that consume  
24 secondary materials, for the purpose of trying to figure out how  
25 best we could approach market development for California.

26 Following this conference, I was invited by the  
27 Japanese government and other Asian countries to meet with their  
28 officials and industries to determine secondary material demand



1 from these countries from the United States, and specifically  
2 California. And this trip was organized by the U.S. Department  
3 of Commerce.

4 It enabled me to observe first-hand the most advanced  
5 waste management and recycling approaches in Japan, and options  
6 of reporting U.S. waste management know-how to Taiwan, Korea,  
7 Thailand, the Philippines, and mainland China.

8 My observations and recommendations from that trip  
9 are contained in this paper, called The Future of Recycling,  
10 which I wrote about a year before -- prior to coming to the  
11 Board.

12 In addition to my policy work with CEC, I helped  
13 found the Santa Barbara Household Hazardous Waste Management  
14 Program, among the most successful in the state, and initiated  
15 metals recovery programs and other curb-side and home composting  
16 programs in our area.

17 In my role at CEC, I also served as a waste  
18 management consultant to many state, county, and local  
19 governments, including the Counties of San Bernardino, Kern,  
20 Sonoma, Santa Barbara, and the Cities of San Diego, Los Angeles,  
21 Berkeley, and Oxnard.

22 I authored the first plan in California to define how  
23 a city could reach the 50 percent diversion goal mandated by  
24 AB 939.

25 Based on this history, I think I bring a  
26 comprehensive waste management policy background and practical,  
27 down-to-earth working experience in recycling and waste  
28



1 reduction that is appropriate, given the hierarchy mandated  
2 under AB 939, focused on waste reduction and recycling.

3 That's basically what I have to say.

4 SENATOR PETRIS: That's pretty extensive.

5 Did we learn anything from Japan on recycling?

6 MR. RELIS: Well, actually, we're doing pretty well.  
7 I expect by '95, if we meet our targets, we'll be comparable to  
8 Japan in recovery.

9 They are very effective in the return of -- they  
10 handle glass much better than we do, and they also have a very  
11 effective paper recovery program.

12 But I think the comparisons in the touting of Japan  
13 relative to the U.S. in materials recovery is not all that  
14 warranted. I think we're doing a pretty good job of it now.

15 SENATOR PETRIS: I understand that about 55 percent  
16 of the waste going to the dumps comes from individuals,  
17 residential, rather than commercial.

18 Have you given any consideration, in addition to the  
19 other things you're doing to try to reduce the flow, to charging  
20 the individual resident by bulk, so that the less garbage we put  
21 out, the less we pay, as an inducement to recycling?

22 MR. RELIS: Yes, in the --

23 SENATOR PETRIS: Is that feasible?

24 MR. RELIS: Yes.

25 In the source reduction and recycling elements of the  
26 939 plans, we've received about -- over 400 of the 580 that will  
27 ultimately be submitted and processed by our office. They call  
28







1 that in the waste field variable can rates, which means, you pay  
2 according to what you produce.

3  
4 Seattle, the City of Seattle pioneered this, and we  
5 have required in the preparation of the plans, cities are to --  
6 cities and counties are to specify what measures they can  
7 encourage the public to reduce the amount of waste in the first  
8 place. So, the variable can rate is looked at as one of the  
9 primary means of doing that.

10 SENATOR PETRIS: How's that measured? By weight?

11 MR. RELIS: Well, in some cases, in Seattle, they  
12 have gone to a weight base, but mostly it's by the number of  
13 containers and the size of containers. So, a very active  
14 recycler would produce, let's say, a 32-gallon container, and  
15 that's what they get once a week. Whereas, then the size of  
16 container goes up, so the rate for the 32 would be the least,  
17 and progressive, the more you generate, the larger the can, it  
18 would be a larger rate compounded.

19 SENATOR PETRIS: Have we given up on burning?

20 MR. RELIS: On incineration?

21 SENATOR PETRIS: Using the energy?

22 MR. RELIS: Well, in the way AB 939 is structured,  
23 the requirement is that before incinerate -- it's referred to as  
24 transformation in the law. And it is allowed to count for up to  
25 10 percent of the 50 percent number, the diversion rate. But it  
26 can only count after a city or a county has achieved the first  
27 25 percent diversion.

28 Now, many communities are currently processing wood



1 waste, or yard waste, into -- they chip it, and they ship it to  
2 boilers in the Central Valley. And there are quite a number of  
3 those. And also waste tires are being incinerated, used as fuel  
4 for Calvera Cement Company, and the Oxnard facility in Modesto,  
5 would be two examples.

6 So, while it is not a priority, given priority in the  
7 939 scheme, we still have incineration in the state.

8 SENATOR PETRIS: How much of that is used to convert  
9 to energy?

10 MR. RELIS: Most. At this point, almost all -- do  
11 you mean, is the material that's incinerated converted to  
12 energy?

13 SENATOR PETRIS: No, the process of incineration.

14 MR. RELIS: Oh, I believe virtually all of the  
15 incinerators in the state are primary energy generators.

16 SENATOR PETRIS: I thought so.

17 Any questions by any of the Members? Senator Beverly  
18 moves confirmation.

19 SENATOR BEVERLY: So move.

20 SENATOR PETRIS: Call the roll.

21 SECRETARY WEBB: Senator Beverly.

22 SENATOR BEVERLY: Aye.

23 SECRETARY WEBB: Beverly Aye.

24 Senator Mello.

25 SENATOR MELLO: Aye.

26 SECRETARY WEBB: Mello Aye.

27 Senator Petris.  
28



1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Petris Aye.

3 Senator Craven. Senator Roberti.

4 Three to zero.

5 SENATOR PETRIS: You're on your way. Thank you.

6 Now we'll take a recess before Mr. Rodriguez,  
7 Department of Health Services.

8 [Thereupon a brief recess was taken.]

9 SENATOR PETRIS: Our quorum is back.

10 Now we have Mr. Rodriguez.

11 Before we start, I'd like to propose -- let me find  
12 out first how many are going to testify on this nomination.  
13 Seven.

14 What I'd like to recommend is that we hear from  
15 Mr. Rodriguez, hear the testimony -- I assume it's pro and con  
16 out there -- and go over to next week for any additional  
17 testimony that there might be and vote.

18 This deadline date is also August, August 12th.

19 MS. MICHEL: Yes, sir.

20 SENATOR PETRIS: Based on what I've learned so far,  
21 my own vote would be negative. And if we went to a vote today,  
22 you'd be rejected.

23 I always believe in giving each nominee a full house,  
24 full committee, out of fairness.

25 So, if there's no objection, that's what we'll do.  
26 We'll hear from you first, and tell us why you think we should  
27 support the nomination. Then we'll hear from the individuals.  
28





1 MR. RODRIGUEZ: Thank you, Senator.

2 Good afternoon, Senators.

3 My name is John Rodriguez. I'm the Chief Deputy  
4 Director for Programs at the Department of Health Services.

5 A little bit of background about me. I'm a native  
6 Californian, raised in Riverside. Went to the University of  
7 California at Riverside, and have lived in Sacramento since  
8 1973.

9 I've been with the Department of Health since 1973,  
10 primarily with the Medi-Cal program in a variety of staff  
11 services, supervisory, and management positions.

12 In 1984, I was appointed to a position called  
13 Assistant Secretary for Program Affairs with the Health and  
14 Welfare Agency. I was there for approximately one year, where I  
15 gained considerable experience working as liaison between the  
16 Agency Secretary and the twelve departments of the Health and  
17 Welfare Agency.

18 In 1985, I was appointed as Deputy Director of the  
19 Department of Health Services for Medical Care Services, which  
20 is our Medi-Cal program. As you can imagine, that had been a  
21 very challenging assignment, where, on a day-to-day basis,  
22 you're balancing the competing forces of cost, access and  
23 quality. That's what I did for approximately six-and-a-half  
24 years, until I was appointed to this position.

25 That's a fairly brief sketch of my professional  
26 background. I'll be happy to go into it in more detail if you  
27 have any questions.  
28



1 I think what's more important for this Committee is  
2 my management philosophy. What am I going to bring to this job?  
3 The philosophy I've developed primarily is the time I spent in  
4 the Medi-Cal program of six-and-a-half years. This is what I  
5 bring to this current job.

6 This philosophy is one which emphasizes first and  
7 foremost open and clear communication with staff inside the  
8 Department, and with interest groups and constituencies outside  
9 the Department. This is a philosophy which clearly articulates  
10 our priorities both internally and externally. This is a  
11 philosophy which is open to new ideas and other points of view.  
12 And finally, it recognizes that we bear responsibility -- I bear  
13 responsibility to improve the programs that I operate. The  
14 status quo is not acceptable.

15 In the weeks and months ahead, we'll be facing,  
16 perhaps, some of the greatest challenges we have as Legislators,  
17 managers, people who work for the State of California, as we try  
18 to fashion a solution for the state budget. It's going to be  
19 more important an ever for us to clearly set priorities for the  
20 services that we're going to provide, creatively implement  
21 program changes that may be necessary, and ensure there are open  
22 lines of communication to and from all concerned parties.

23 This is the type of leadership that I have  
24 demonstrated in the Medi-Cal program over the past six-and-a-  
25 half years, and which you can continue to expect from me in the  
26 months and years ahead.

27 I'd be happy to answer any additional questions you  
28



1 may have.

2 Thank you.

3 SENATOR PETRIS: All right.

4 Any questions at this time? Senator Mello.

5 SENATOR MELLO: I want to go through some of the  
6 letters that I received from people, and some of the concerns.

7 One of my biggest concerns that I discussed with you  
8 the other day is the whole reform of Medi-Cal billing. I know I  
9 showed you a billing done by the same medical group with similar  
10 procedures for Ob-Gyn delivery, and one is the short form that  
11 goes to the third party payers, the insurance company, and the  
12 other one goes to Medi-Cal. Eighty listings on one, plus the  
13 standard one's about eight.

14 I just can't understand it. I get more complaints on  
15 it from providers, and even from the patients, about how  
16 Medi-Cal is so difficult to have access to, and the billing  
17 takes so long, and records get lost. Then, when they finally  
18 get paid, it's a very small percentage in relationship to their  
19 costs.

20 Many providers are just opting out, as you know, and  
21 others have put a cap on how many patients they'll see.

22 I think, if you did nothing else in your job there  
23 but to just change the Medi-Cal system, bring it right up to  
24 what the private billing -- private paying is with insurance  
25 companies, that would be a tremendous improvement.

26 So, I just want you to comment briefly on what you  
27 think you can do as a director of this position.  
28







1 MR. RODRIGUEZ: Just a couple of items.

2 By the way, this material you gave me, by the way,  
3 using the tax I.D. number, we were able to track down the  
4 provider. The provider is, their business name is called Ob-Gyn  
5 Consultants. And I was able to contact their billing manager.  
6 Her name is Mary Homick, and I chatted with her.  
7

8 And she -- she basically told me that, while there  
9 are singular issues occasionally that she now has ways to  
10 resolve with us, she felt that once they went to computer  
11 billing, computerized billing, that they'd had a substantial  
12 improvement in their billing and was relatively happy.

13 She didn't know which physician in her group -- it's  
14 a group practice -- that had chatted with you, Senator. But she  
15 said she'd call me back if there was any significant problems  
16 that -- in polling her members -- that she encountered. And she  
17 never did call me back.

18 So, at least in that particular case, there's some  
19 follow-up.

20 Your point, though, about differences between Medi-  
21 Cal billing and the difference between Medi-Cal reimbursement  
22 rates is something I'm extremely familiar with.

23 As far as the rates go, I know as well as anybody the  
24 -- the fact that many Medi-Cal rates are much less than what  
25 providers would get, even in PPO-type arrangements. I think the  
26 exception to that would be in the maternity care area, where a  
27 considerable amount of money has been put in over the last few  
28 years. The rate increase is about 80 percent, and that



1 represents a priority that we set.

2 I don't think that, because of our budget problem,  
3 we're going to be in a position where we can substantially  
4 increase Medi-Cal rates in the short-term.

5 But we need to be moving forward toward, and what I  
6 am committed to moving toward, is common billing forms, common  
7 data elements. The kind of things that, if a provider bills an  
8 insurance company, Medi-Cal, Blue Cross, you know, whoever it  
9 may be, HCFA, the Health Care Finance Administration for  
10 Medi-Cal, but they're essentially using the same form. And the  
11 form that we're headed toward, by the way, for physicians is the  
12 HCFA-1500. That's the form that most providers will be using,  
13 and that's an area that I think we do have a good chance,  
14 Senator, of making some movement on, even in a time when we --  
15 when budget resources are scarce, and we can't significantly  
16 improve provider reimbursement rates.

17 SENATOR MELLO: Well, I think that would be an  
18 increase for the providers if you just simplified their billing,  
19 because it would go a long ways.

20 I began working with Beverly Myers some years ago in  
21 trying to get the Medi-Cal system changed. We made a little  
22 headway, but not much since then.

23 I've gotten several letters from other people. One  
24 is from the Alliance for the Mentally Ill. One is from a person  
25 there in Carmel.

26 Have you got copies of these letters?

27 MR. RODRIGUEZ: Yes, sir.  
28



1           SENATOR MELLO: The other one is from the California  
2 Alliance for the Mentally Ill. I guess they're the same group.  
3 But they have a lot of negative statements here about how you're  
4 trying to deal with certain drugs to treat the mentally ill;  
5 that you're hard to pin down; you're evasive, and you shoot down  
6 legitimate reimbursements to doctors and hospitals. To take  
7 care of the mentally ill and AIDS patients in the long run, this  
8 action seems very costly, and so forth.

9           Do you have a copy of that letter?

10          MR. RODRIGUEZ: Yes, sir.

11          SENATOR MELLO: Do you want to just comment on what  
12 you see?

13          MR. RODRIGUEZ: Briefly, and I'll reply to any  
14 questions you may have, I view this to be a policy disagreement  
15 between the Department and myself in particular, since I was in  
16 charge of the Medi-Cal program at the time.

17          One of the bills that we were arguing about came up.  
18 It revolves around coverage -- Medi-Cal coverage of in-patient  
19 services for the mentally ill. And I -- I admit that we have a  
20 disagreement on that, and that the Department took an opposed  
21 position on that bill.

22          I take exception, however, with the comments about me  
23 wherein I'm found to be slippery, or evasive, or that I go out  
24 of my way to make things uncomfortable, or make it tough for  
25 providers to provide services to the Medi-Cal program.

26          I think that if -- that if you read many, many of the  
27 other letters of support that came into me, for me, you'll find  
28







1 that the prevailing attitude is exactly the opposite. While  
2 I've been in a position for six-and-a-half years where my  
3 standard answer when it came to the money has often had to have  
4 been no, because we don't have the money, the prevailing  
5 attitude in these letters is that I was an individual that they  
6 could work with, who would be listening to other points of view,  
7 that would communicate directly with people, that would be  
8 accessible.

9 And I'm rather surprised that -- that the California  
10 Alliance for the Mentally Ill found me to be -- to be that way.  
11 Indeed, the physician at the University of California at Irvine,  
12 who we spent a lot of time working with on developing policy  
13 statements and clarifying policy statements, I think that we  
14 went the extra mile in terms of meeting with him, addressing his  
15 concerns, and we've made a lot of progress, I believe, in terms  
16 of clarifying the policy.

17 I'm not here saying that it was -- that we have to  
18 agree on everything. We have lots of disagreements. But I  
19 think they're off point in terms of their analysis of my  
20 character, and that the record with other providers, other  
21 interest groups, beneficiary groups, as well as staff here in  
22 the Legislature and Members whom I've worked with over the  
23 years, would tell you just the opposite.

24 SENATOR MELLO: There's a letter written out here  
25 sort of printed language. Did you see that one?

26 MR. RODRIGUEZ: No, sir.

27 SENATOR MELLO: It's got a lot of -- perhaps, if I  
28



1 could just -- do other Members have this in their files? It's  
2 addressed to Nancy Michel.

3 SENATOR PETRIS: No, I don't have it.

4 SENATOR MELLO: Was this distributed?

5 MS. MICHEL: I'm not certain.

6 SENATOR PETRIS: Yes, we have it.

7 SENATOR MELLO: I don't know who that's from.

8 What I'd like to do, John, rather than go through it,  
9 it's fairly lengthy, I'll give it to you. Then, next week when  
10 you come back, if you want to offer some comments on it.  
11 They're raising about five concerns as well.

12 Then I also, for the record, have letters from the  
13 County of Santa Cruz, Eleanor Hall, the Director of Health  
14 Services Administrator; Children's Hospital in Los Angeles; and  
15 University Children's Medical Group. I think these are all part  
16 of the letters that you have. California Association of Public  
17 Hospitals. So, there are quite a few letters in support.

18 My priority is the whole area under your  
19 administration, but I think high priority should be given to a  
20 completely uniform billing system, even going electronic, where  
21 they can do it via the modem on a computer, and you just  
22 transfer the money electronically. And once it's checked out,  
23 without a lot of back and forth billing, it goes astray some  
24 way.

25 MR. RODRIGUEZ: You know, I agree with you a hundred  
26 percent.

27 Providers who finally jump into the computer billing  
28



1 are immediate billing, whether it's tape to tape, or phone to  
2 phone line, disk to disk, or what have you. And it cuts out a  
3 lot of hassles on both ends, and it's obviously cheaper to bill.  
4

5 One of the points I wanted to make, Senator, if I  
6 will, on a policy basis about services to the mentally ill, or  
7 investigational services of any type to any patient. I think  
8 that, you know, I emphasize creativity. I emphasize changing  
9 the status quo, because when you have no money, or you're in a  
10 negative budget situation, or just as time goes on, the status  
11 quo is a killer. You've got to be prepared to change the way  
12 you're doing business to keep up with the way medicine's  
13 practiced, and to change the rules if you're going to have to  
14 operate the same type of program with less money.

15 Back in 1987, we were working with -- I was working  
16 personally with San Francisco General Hospital as they were  
17 pioneering many treatments for AIDS patients. At that time in  
18 Medi-Cal, there was no coverage at all for investigational drugs  
19 or investigational therapies.

20 It was under my direction that my staff promulgated  
21 regulations for the first time to cover investigational drugs  
22 and investigational new therapies in the Medi-Cal program.  
23 Before that, investigational drugs and therapies of any sort was  
24 not a covered benefit under the Medi-Cal program under  
25 regulation.

26 And the point here is that, addressing the concern  
27 about that time, I'm looking for ways to not pay for legitimate  
28 services. I think that's the example -- and I have a copy of







1 those regulations if someone's interested in looking at them --  
2 where we looked for a way to solve a problem; where the  
3 standard medical therapies weren't working in the treatment of  
4 AIDS.

5 It doesn't always have to be the treatment of AIDS.  
6 It could be the treatment of the mentally ill in this case.

7 The point is, is when -- Medi-Cal will cover, and  
8 it's because of regulations that came in under my watch and at  
9 my direction, we do cover those things when they're appropriate.

10 The issue here is, Medi-Cal's got a tight budget. I  
11 don't want to be paying for things in an in-patient setting that  
12 could be done on an out-patient basis, or it's not justified.  
13 Everyday we're setting priorities of where we can put our money.  
14 If there was all the money in the world, I'm sure you all know  
15 we could do a lot more things. But we got to set priorities,  
16 and that's really what I've done here in this case.

17 SENATOR MELLO: All right, let me follow up on that,  
18 though.

19 What about, it's all right to have your philosophy,  
20 but we're a nation of laws. When a law is passed and signed  
21 into law, aren't you obligated to follow it?

22 MR. RODRIGUEZ: Absolutely, sir.

23 SENATOR MELLO: Here's what one of the persons say:

24 "AB 1625, by Burton, Chapter 1197,  
25 was signed into law in 1989.

26 Rodriguez led Medi-Cal's opposition  
27 to the bill, then found ways for  
28



1                   Medi-Cal to ignore the law when it  
2                   was passed and signed, and continued  
3                   to deny reimbursements for  
4                   investigational new drugs for AIDS  
5                   patients, much to the consternation  
6                   of people at the San Francisco  
7                   General Hospital, for whom  
8                   Assemblyman Burton carried the  
9                   bill."

10                  Is that true or not?

11                  MR. RODRIGUEZ: It's absolutely not true.

12                  And just for clarification, we're not arguing about  
13                  payment for the investigational new drug per se. It's  
14                  generally the drug company that covers the cost of the  
15                  investigational new drug.

16                  What we're talking about is the physician services,  
17                  the hospital services, the ancillary services, if you will, for  
18                  when a -- for the situation the patient's in.

19                  What we're talking about is, should in all cases  
20                  when it's appropriate, does Medi-Cal pay for acute in-patient  
21                  care.

22                  I would maintain, and it's consistent with the law  
23                  and the regulations, that Medi-Cal pays for in-patient care  
24                  when it's medically necessary. If it's not medically  
25                  necessary, we don't pay for it.

26                  We have no problem, and the regulations fully  
27                  provide for it, for the provision of investigational services,  
28



1 investigational drugs, in an in-patient setting, if the medical  
2 necessity of that admission and that treatment is appropriate.

3 SENATOR MELLO: Wait, hold it.

4 Who determines the medical necessity? You or the  
5 doctor?

6 MR. RODRIGUEZ: The doctor. The doctors who work  
7 -- well, not me, obviously. Doctors that work with me, for me,  
8 in our Medi-Cal field office, approve treatment authorization  
9 requests. All elective treatment authorization -- all elective  
10 surgeries, admissions to hospitals, are prior authorized by the  
11 Medi-Cal program.

12 SENATOR MELLO: What about the attending physician?

13 MR. RODRIGUEZ: The attending physician is the --  
14 is the person who completes the treatment authorization  
15 request, and actually works with my physician in determining  
16 whether that admission's proper or not.

17 In fact, in this case, I would submit that most of  
18 the progress we've made in terms of resolving the problem  
19 between, in this case, University of California at Irvine,  
20 Psychiatric Department, Dr. Potkin, and the Medi-Cal program  
21 has been because I have forced Dr. Potkin and -- and the  
22 psychiatrist that works for me in the San Bernardino field  
23 office to sit down and work together to find the protocols that  
24 are going to be used by Dr. Potkin, and approve those that are  
25 appropriate or not. In fact, Dr. Warden, who works for me, has  
26 gotten a letter from Dr. Potkin, thanking him for the progress  
27 they've made. I think we've made some significant progress on  
28





1 this issue.

2           SENATOR MELLO: I've had people call my offices,  
3 and I'm just shocked by all this medical necessity, and this  
4 prior authorization if medically necessary, and then it sort of  
5 leaves the patient in limbo, many times going into an acute  
6 care hospital, having been prior authorized, but the big  
7 question mark about whether it's medically necessary. I guess  
8 you have to wait until later to see whether it was or not.

9           This creates a lot -- there's a lot of unhappy  
10 people out there, the way we're running our health programs.

11           MR. RODRIGUEZ: Well, I could understand why some  
12 people would be unhappy, but the reality of it is, we have a  
13 limited amount of money. Wherever possible, we want to do  
14 services on an out-patient basis, or a physician's office  
15 visit, or use drug treatments rather than in-patient admissions  
16 because, if they can be done, it's a heck of a lot cheaper.

17           Prior authorization or concurrent review is not  
18 unique to Medi-Cal. Insurance companies and others do that for  
19 the same reason we do, because you want to make sure that the  
20 service is medically appropriate, and because you have a budget  
21 to stay within.

22           SENATOR MELLO: Well, you say we don't have all the  
23 money, but I mean, Medi-Cal's a part of Medicaid, a federal  
24 program.

25           MR. RODRIGUEZ: Yes, sir.

26           SENATOR MELLO: My understanding is, you're either  
27 eligible or you're not. Unless we get into rationing, and I  
28



1 don't think we've approved a way of rationing medicine, but  
2 we've had deficiencies in the Medi-Cal budget because we're  
3 obligated.

4  
5 When you pass the budget, you're just guessing how  
6 many people are going to walk in for services. But if the  
7 amount of people coming in is more than that, I think under  
8 federal and state law, we're obligated to care for them under  
9 the law.

10 MR. RODRIGUEZ: That's correct, sir.

11 SENATOR MELLO: So I mean, if we have the attitude,  
12 if we don't have all the money, I guess you're saying we're  
13 going to kick somebody off because we're running out of money.

14 MR. RODRIGUEZ: No, it's -- we make assumptions in  
15 our estimate about the number of people who would be eligible  
16 for the program, and to what extent they will use it. Break it  
17 down very finely about the types of services they use.

18 We also in our assumptions assume that we are going  
19 to be doing prior authorization, that every in-patient  
20 admission request is not going to be authorized because it's  
21 not medically necessary.

22 But when we're talking about serving four-and-a-  
23 half million people on average per month, we're just making  
24 guesstimates. To the extent we miss that, and medically  
25 necessary services are provided in excess of what we had  
26 assumed, yes, sir, we will pay for those. And those are the  
27 years when I have to come back for, among other reasons, and  
28 get a deficiency appropriation. And we've done that fairly --



1 fairly frequently in the past few years in Medi-Cal.

2           SENATOR MELLO: Another case I recall is this 94-5  
3 year old woman that when in to have some denture work done  
4 under Medi-Cal and was denied. And they told her they'd pay  
5 for removal of her teeth, which, she only had a few left anyway  
6 at that age. And finally, the Dental Society there in the  
7 county felt that the decision was awful and went against the  
8 patient, so they, out of their own funds, just donated their  
9 services to give her a plate, or a bridge, whatever she needed  
10 there to help keep her teeth somewhat functioning so that she  
11 could remain in her health that way.

12           Those are the kind of decisions, I think, are very  
13 strict, and they don't look at what's even best for the  
14 patient and what saves money in the long run.

15           Okay, I think I'll quit the questioning for now.

16           MR. RODRIGUEZ: Thank you, Senator.

17           SENATOR PETRIS: Senator Beverly.

18           SENATOR BEVERLY: Let me ask one.

19           This letter from the California Alliance for the  
20 Mentally Ill refers to a Russell bill, SB 127.

21           MR. RODRIGUEZ: Yes, sir.

22           SENATOR BEVERLY: It isn't clear to me what he's  
23 getting at. What is that bill?

24           MR. RODRIGUEZ: That was the bill that -- the  
25 policy issue that I was referring to. That was a bill that  
26 sought to expand Medi-Cal coverage for in-patient services to  
27 the mentally ill, and which led to the policy disagreement that  
28







1 we have before us, sir.

2 SENATOR BEVERLY: Thank you.

3 SENATOR PETRIS: Is there anyone in the audience?  
4 We had several shows of hands before. Those in support come  
5 forward first.

6 MR. FLATT: Mr. Chairman, Members, my name is  
7 Dennis Flatt. I represent Kaiser Permanente.

8  
9 Prior to this client, I represented the California  
10 Association of Hospitals and Health Systems. I had a lot of  
11 contact with the Department of Health Services, and John  
12 Rodriguez in particular, in those years representing the  
13 hospital industry, and I have frequent contact with him now.

14 I think he's got one of the toughest jobs in state  
15 government. And if you look at the programs that he currently  
16 has under his jurisdiction -- Medi-Cal, Family Planning,  
17 Maternal and Child Health, Public Health, Licensing -- it's  
18 very difficult to be in a position for any length of time there  
19 without stepping on a lot of toes.

20 I heard that there might be some opposition to his  
21 confirmation, and that's why I came forward. I don't make a  
22 practice of appearing before this Committee on Governor's  
23 appointments, but I really respect John over the years of being  
24 able to call a spade a spade, and to look at things  
25 analytically, and to be very straightforward about dealing with  
26 problems that are brought to him.

27 In fact, I'd be hard pressed to even recollect an  
28 instance where I prevailed on an issue. I don't think I've



1 gotten Jack Squat out of this guy over the years in terms of  
2 things that I've been arguing for.

3 But he's been in a very difficult job, trying to  
4 administer programs with no new money. And frequently, when  
5 you're representing the hospital industry or health programs,  
6 you're in there arguing for something that requires additional  
7 funding in some magnitude, and often times big bucks.

8 I think he's generally well regarded in Sacramento  
9 because of the energy and the expertise, and his analytical  
10 ability, and intelligence that he brings to this job. I  
11 strongly recommend that he be confirmed.

12 Thank you.

13 SENATOR PETRIS: Any questions of the witness?

14 Next witness.

15 MS. GIRSH: Thank you, Mr. Chair and Members.

16 I'm Terri Girsh with the California Association of  
17 Children's Hospitals.

18 Children's hospitals are regional tertiary care  
19 centers that take care of the sickest of sick children. We're  
20 also heavily dependent on the Medi-Cal program. We average  
21 over 70 percent Medi-Cal in volume.

22 We've had the pleasure of working with  
23 Mr. Rodriguez in his previous post as head of the Medi-Cal  
24 program. He's always been willing to work with us on difficult  
25 policy, as well as reimbursement issues. And we strongly  
26 recommend your consideration of him for this new position with  
27 the Department of Health.  
28



1 Thank you.

2 SENATOR PETRIS: Thank you.

3 Next.

4 MR. SHANBOUR: My name is Fred Shanbour. I'm  
5 Chairman of the CMAC Commission.

6 I have had the pleasure of working with John under  
7 this capacity that he's in today, and in a lesser one that he  
8 had yesterday.

9 I have to tell you that it is with a breath of  
10 fresh air when I call him, when we need him, his door is  
11 always open to us.

12 We don't always get everything we ask for; however,  
13 I understand that, too.

14 But I do recommend with all my soul the  
15 confirmation of this man.

16 Thank you.

17 SENATOR PETRIS: Thank you.

18 MS. WOLEN: Mr. Chairman, Members, my name is  
19 Judith Wolen. I represent the California Reproductive Health  
20 Association. CRHA is an organization of about 120 family  
21 planning and maternal-child health clinics throughout the State  
22 of California.

23 Through working with him in the past five years --  
24 I've had several opportunities to work with Mr. Rodriguez on  
25 several issues, including Medi-Cal, family planning, and  
26 maternal and child health issues -- I have always found him  
27 extremely knowledgeable in the issues, always accessible.  
28







1 I have to say that it's rare that you can always  
2 get appointments so quickly with someone at his level, but it  
3 has been wonderful to be able to work with him over the years.

4 I do have to say we haven't always agreed, also.  
5 There have been some things that we didn't always get our way  
6 on, but I do have to say I do respect him. I think he has a  
7 great knowledge of the issues, and I truly support his  
8 confirmation.

9 Thank you.

10 SENATOR PETRIS: Thank you.

11 MR. GORDON: Mr. Chairman, Members of the  
12 Committee, I'm Milton G. Gordon, this Committee's appointee to  
13 the California Medical Assistance Commission.

14 I'm here this afternoon to support the confirmation  
15 of John Rodriguez.

16 I want to give you a very short bird's-eye view of  
17 my contact with Mr. Rodriguez. I've been on the California  
18 Medical Assistance Commission, which is -- does the selective  
19 provider contracting for Medi-Cal with hospitals, for almost  
20 two years now. And for these past two years, it has been a  
21 real pleasure to work with Mr. Rodriguez.

22 I have listened to the repetition of some of these  
23 ad hominem observations that have been made regarding  
24 Mr. Rodriguez, but I must tell you that it's 180 degrees  
25 opposite of what my experience has been. With me,  
26 Mr. Rodriguez has always been very forthcoming, very  
27 cooperative, and always a straight shooter.  
28



1 I also believe that since the advent of Dr. Molly  
2 Joel Coye as Director of the Department of Health Services,  
3 that it's been like a breath of fresh air working with the  
4 Department of Health Services. I think that Mr. Rodriguez  
5 would be a splendid appointment to carry out the policies of  
6 Dr. Coye, and in further working with the California Medical  
7 Assistance Commission.

8 Any questions?

9 Thank you, Mr. Chairman.

10 SENATOR PETRIS: Thank you, Mr. Gordon.

11 MS. KELCH: Mr. Chairman and Members, Deborah Kelch  
12 of the California Association of HMOs. CAHMO represents 35  
13 HMOs in California, with more than 10 million enrollees.

14 Our membership is supporting the confirmation of  
15 John Rodriguez.

16 I'd like to say that myself, in my own professional  
17 experience, have had the opportunity to work with John over a  
18 period of ten years, when I was working for the State Senate  
19 and State Assembly, and now at CAHMO. And my experience with  
20 John, although given the diversity of my positions, we haven't  
21 always agreed on the substance of the issues, my experience  
22 with him is that he's bright, he cares. He gives you his time  
23 and his energy to try to make things work. And I think that's  
24 the kind of person we need today in the Department of Health  
25 Services and government, because we have some tough problems to  
26 solve.

27 So, I recommend his confirmation to you.  
28



1           SENATOR PETRIS: Thank you.

2           Any others in support?

3           Any persons here to testify in opposition? Come  
4 forward, please.

5           MS. MENEFEE: Good afternoon, Committee. My name  
6 is Theresa Menefee.

7           I have several issues of concern in reference to  
8 Mr. Rodriguez's appointment. And they're based both in the  
9 management level of his management expertise with the  
10 Department.

11          SENATOR PETRIS: Excuse me.

12          Are you here as an individual, or are you speaking  
13 for any organization?

14          MS. MENEFEE: I'm as an individual.

15          SENATOR PETRIS: Okay, thank you.

16          MS. MENEFEE: I'll make this short and brief.

17          I submitted a letter back on May 13th, and it  
18 addressed several concerns that I had.

19          Also I have been through a discrimination issue  
20 with Mr. Rodriguez, who gave me a letter of apology in  
21 reference to the discrimination issue, who also made a  
22 statement in a settlement agreement that he would provide  
23 training to the Department's management staff within 180 days  
24 from the signing of the agreement. That training did not  
25 happen until February of this year.

26          In the midst of that, I had another discrimination  
27 incident that happened to me in the Department, DHS, not  
28







1 directly under Mr. Rodriguez, but I felt that if this training  
2 had of been initiated, maybe I wouldn't have to go through that  
3 same issue again.

4 In reference to Mr. Rodriguez, I worked with the  
5 Medi-Cal Eligibility Branch that Mr. Rodriguez was the Deputy  
6 Director over Medi-Cal. And I was literally told by his branch  
7 chief that he supervises that I was not to be in the hall or in  
8 my cubicle associating with other employees of my ethnic group  
9 because staff were intimidated by it.

10 This was brought to Mr. Rodriguez, and it took a  
11 year-and-a-half for the Department, under Mr. Rodriguez, to  
12 make a decision.

13 Also, currently now, there are issues that are  
14 going on in Health Services under Mr. Rodriguez, in his group  
15 FIMD, which is under Medi-Cal, where a watermelon was placed on  
16 an individual's desk of my ethnic group, and the note was  
17 attached to it stating that all individuals of this group liked  
18 to eat watermelon. This is another issue that's been  
19 prolonging with the Department under Mr. Rodriguez.

20 Then there's incidents of his management, as far as  
21 his branch chiefs doing business, using state funds, misuse of  
22 state funds, to conduct personal businesses with their own --  
23 as laundromat businesses, or things that are not state-related.

24 There's also issues of husbands and wives working  
25 under the same division. Jack Toney is the Division Chief over  
26 Medi-Cal Benefits. Janet Toney, his wife, is a Branch Chief is  
27 Medi-Cal Benefits.  
28



1                   There is an individual that works under Janet  
2 Toney, named Carl Miller, who told an employee to suck off.  
3 This was elevated up to Mr. Rodriguez's level, and nothing was  
4 ever done about it.

5                   Another issue is, there's a Tameron Mitchell that  
6 works under Mr. Rodriguez whose husband works under  
7 Mr. Rodriguez, or was working under Mr. Rodriguez. I have  
8 heard over the last couple of weeks that has been changed. I  
9 am not sure.

10                  In overall of all these things, I have come to the  
11 Senate Committee and asked that, on my behalf, that they  
12 strongly look at this appointment. I mean, no one knows where  
13 I could be five years from now. I could be back at Medi-Cal,  
14 and I would hate to have to go through a triumph of another two  
15 years dealing with issues of being treated unfair, favorable  
16 treatment based on management, upper level, not addressing  
17 issues that are being brought to them.

18                  And basically, those are my concerns.

19                  SENATOR PETRIS: Thank you.

20                  Are there any questions of this witness? Senator  
21 Mello.

22                  SENATOR MELLO: I handed him a letter, and it looks  
23 like that's the same letter that you have. Would you take a  
24 look at it?

25                  MS. MENEFEE: That's it.

26                  SENATOR MELLO: Your letter was not signed.

27                  MS. MENEFEE: Well, there's two of them. There was  
28



1 that one, and then there was another one that went to Nancy and  
2 Peter Hansel.

3 SENATOR MELLO: So, at any rate, you know where the  
4 source of the letter is from.

5 MS. MENEFEE: And one other issues, I'm sorry, that  
6 I forgot to mention.

7 Also, the time frame that the Department uses to in  
8 reference complaints. Now, I keep getting different stories on  
9 this. One says it's up to the higher management level, and  
10 others say it's policy issue. I'm not for sure, but DHS's  
11 history of following up on complaints, and I'm speaking  
12 especially when I was under Mr. Rodriguez in Medi-Cal, it took  
13 a year-and-a-half. Their reasons were several: we don't have  
14 enough staff; budget is low; things of that nature.

15 Bottom line is, everyone's here to do a job, and  
16 you can't tell a person you're going to pay them next week  
17 because you don't have enough staff to pay them. It doesn't  
18 work like that.

19 Also, I'd like to address the fact that I did a  
20 study. I went over to SPB, and I found out that DHS's  
21 percentage for adverse actions based on ethnic group was 31  
22 percent Black, 15 percent Hispanic, and 4 percent other. And I  
23 think that should be looked into.

24 SENATOR PETRIS: I have a question --

25 MS. MENEFEE: Sure.

26 SENATOR PETRIS: -- on the incident you mentioned,  
27 where there was an agreement that a certain thing's going to  
28







1 happen within --

2 MS. MENEFEE: One hundred eighty days from the date  
3 of the signing.

4 SENATOR PETRIS: Then you said it wasn't done until  
5 February, but that doesn't give me a figure.

6 How many days past the 180 does that mean?

7 MS. MENEFEE: Well, the agreement was signed in  
8 October of '90, and the training should have been done in April  
9 of '91. The training was not done until February of '92, so  
10 approximately 10-11 months later.

11 SENATOR PETRIS: Okay, thank you.

12 MS. MENEFEE: And if you'd like copies of my  
13 letters, I can leave them up here.

14 SENATOR PETRIS: Thank you.

15 MS. MENEFEE: Thank you.

16 SENATOR PETRIS: Any other witnesses?

17 Okay, Mr. Rodriguez, would you care to respond?

18 MR. RODRIGUEZ: I'm not prepared to respond -- I  
19 tried to take notes here on the issues.

20 Let me just say that -- at the outset, that I will  
21 not tolerate acts of discrimination that are brought to my  
22 attention, and I will actively work to try to correct those  
23 situations after they occur.

24 Although I must say that I think some of the things  
25 we need to do is not so much focus on the after-the-fact. It's  
26 take pro-active measures to prevent it at the front end.

27 I do deal straight when investigation shows that,  
28



1 indeed, discrimination occurred. As Ms. Menefee mentioned, I  
2 wrote her a letter of apology. We were wrong, and she deserved  
3 that letter.

4 Also, we missed the due date for the agreement to  
5 provide the training to our managers. That was something that  
6 was out of my control. It dealt with hiring a contractor to  
7 train six to eight hundred managers and supervisors in the  
8 Department of Health Services. I apologize for missing that,  
9 but it was completed, and we have accomplished that.

10 I also believe that that's an example, too, of how  
11 we can help address some of these problems. We are never going  
12 to get enough staff. In fact, with the budget cuts and the  
13 staff cuts that are coming, we'll never get enough staff to,  
14 perhaps, staff the Office of Civil Rights the way we'd like to.

15 I think that what we need to do a better job doing,  
16 though, is preventing acts of discrimination by properly  
17 training our managers, as well as another technique that I've  
18 employed, which is an open door policy to all levels of staff  
19 in the Department, so that to the extent a staff person who  
20 doesn't report directly to me feels that an act of  
21 discrimination has occurred, or potentially has occurred, or  
22 there's a concern they need to get off their chest, they can  
23 get to me, sit in the room, and tell me about it. And often  
24 what we can do is facilitate resolution of these things between  
25 the two involved parties.

26 And in these kind of pro-active things, proper  
27 training, and facilitating resolution of problems before they  
28



1 become bigger problems, I think, are two things that I am  
2 committed to, to help address some of the problems that were  
3 just discussed.

4           SENATOR PETRIS: Let me ask you, you mentioned the  
5 importance of training management as a preventive measure.

6           How do you go about that? Who does the training?

7           MR. RODRIGUEZ: We hired a contractor who -- who  
8 does this for a living. In fact, this is a -- we called it  
9 Diversity Training. It's really techniques on how to manage a  
10 multicultural workforce.

11           And I don't mean management in the typical, you  
12 know, this is how you supervise technique. It's the fact that  
13 we're all different. We all come from different points of  
14 view, different cultures. And that's not wrong. That's not a  
15 problem.

16           Sometimes things are said or done inappropriately,  
17 and they were intended that way. Training's not going to change  
18 that.

19           Sometimes things are said and done inappropriately,  
20 but they weren't recognized as a problem. We very much can  
21 address that kind of situation.

22           SENATOR PETRIS: Have you been at it long enough to  
23 measure any improvement?

24           MR. RODRIGUEZ: No, we just completed the training  
25 in the last month or so. We ran 600 supervisors and managers  
26 through it.

27           I also need to point out, I don't think it's a  
28







1 one-time shot. I think this is something that we need to be  
2 prepared not only to do again and again as new managers and  
3 supervisors come to us. We're not going to do a lot of that in  
4 the next few months and years, but that it's refresher stuff.  
5 And you know, trainers get better; trainers learn new  
6 techniques. This is something that ought to be part of our  
7 ongoing, every year, every two years, you know, as you get  
8 refresher-type stuff going, for all our supervisors and  
9 managers.

10 And we're committed to finding the money in a  
11 basically a budget that's not going to grow, that's probably  
12 going to shrink, because I think it's a priority.

13 It's an often too often used phrase about  
14 prevention, but I very much believe in that. That we we invest  
15 a little money in this now, we're going to save two ways.  
16 Number one, we're not going to be spending time investigating  
17 as many complaints. But more important, we're going to have a  
18 better workforce. A workforce that feels that they are being  
19 dealt with honestly, and straightforward, and with respect by  
20 their supervisors and managers, are going to be a happier  
21 workforce, a more productive workforce. And I think that's the  
22 real value of that.

23 SENATOR PETRIS: Thank you.

24 Any other questions?

25 Then, this will go over until next week, when we  
26 have, hopefully --

27 SENATOR BEVERLY: Mr. Torres just returned.  
28



1                   SENATOR PETRIS: Mr. Torres, did you want to  
2 testify on this nomination?

3                   MR. TORRES: Has everybody else testified?

4                   SENATOR PETRIS: Yes. Do you want to come forward?  
5 Thanks. I missed that, Senator Beverly.

6                   MR. TORRES: I'll try and go slow.

7                   Arnold Torres, representing the California Hispanic  
8 Health Care Association.

9                   I was telling Ms. Michel today that we wanted to do  
10 something that we seldom ever do, and she said, "What? Not  
11 testify?" And I said no.

12                                   [Laughter.]

13                   MR. TORRES: I said we actually wanted to come in  
14 and say some very positive things about the nominee.

15                   The nominee has -- we did not have a lot of  
16 dealings with him prior to his position -- to his being  
17 nominated to this position. We had met. We had had some  
18 meetings, but we really had very little interaction.

19                   Since his appointment, he has always had a very,  
20 very open door. He has been very conscientious about returning  
21 our calls, providing access, listening to our concerns. He  
22 knows that we have had a lot of disagreements on a lot of  
23 things. We normally have a very good and open discussion.

24                   And I think that Mr. Rodriguez reflects the type of  
25 Chief Deputy that, at that level, we really were feeling very  
26 comfortable with. And we still feel comfortable from that  
27 perspective.  
28



1                   However, we have -- we have some concerns. Some  
2 are clearly associated with Mr. Rodriguez. You've heard from  
3 some of the witnesses earlier. You've had letters written to  
4 you about those very, very specific concerns.  
5

6                   Our concern deals with the problem of it being a  
7 systemic issue. You asked last time, Senator Petris, when  
8 Dr. Coye was here, you said that I normally testify, and I will  
9 oftentimes raise issues about affirmative action, and about  
10 balance and equity of hiring.

11                   My response was that this Administration under  
12 Mr. Rodriguez, Mr. Joseph, and Dr. Coye basically inherited a  
13 very bad situation. What they inherited was lack of equity and  
14 -- or, lack of parity with Blacks in mid-management and upper  
15 management positions. That has been a historical problem  
16 within the Department of Health Services. While Blacks have  
17 parity in terms of what their population in the state and what  
18 their population is in the workforce and in the state workforce  
19 is equal, they do not have that parity when it comes to  
20 mid-management and upper management positions.

21                   When it comes to Latinos, they have parity in no  
22 class except, I believe, in secretarial. All the other 14  
23 classes in the state system or out, way out of whack with  
24 parity.

25                   That is what they've inherited. You are all  
26 familiar with the lawsuit that has gotten the attention of the  
27 newspapers. That is a problem that the Department is going to  
28 have to contend with in or out of court, whether it be settled







1 out or in the court.

2           However, it is reflective of a systemic problem.  
3 This Department has a systemic problem.

4           Now, the million dollar question is: Will this  
5 triumvirate of Coye, Rodriguez and Joseph, lead this Department  
6 into a new era? Will they provide the leadership to move them  
7 into an era in which parity is a concern under the  
8 circumstances? But better yet, are they creating precisely  
9 what Mr. Rodriguez said he wants to create, which is the  
10 environment in which employees feel comfortable that, if there  
11 is a problem, they feel comfortable going to their superiors,  
12 going through a system that has integrity and respect and  
13 credibility?

14           But unfortunately, that is not the case under the  
15 present circumstances. Most state employees within the  
16 Department of Health Services do not feel comfortable raising  
17 concerns about discrimination. They do not feel comfortable  
18 that the system that is in place within that Department is  
19 going to give them their fair day in court.

20           These are very, very significant and substantial  
21 problems that we were -- it was brought to our attention quite  
22 aggressively by many, many people in the last three to four  
23 days.

24           We grappled with this, because, as we said to you  
25 earlier, Mr. Rodriguez has provided a very strong breath of  
26 fresh air within that Department. Things do not necessarily  
27 fall through the cracks very much with him. They do with  
28



1 others, Dr. Coye being one of them.

2 Since we were here last, problems do continue to  
3 manifest themselves in that Department at that level. But we  
4 are pleased to say that with Mr. Rodriguez thus far, we have  
5 not incurred that problem.

6 But we do see that the problems I've identified are  
7 substantial. They are significant, and they require some very  
8 serious attention by the leadership of the Department of Health  
9 Services, which does include Mr. Rodriguez.

10 I don't think that the Governor, with all due  
11 respect to you, Mr. Beverly, I don't know if the Governor's  
12 that concerned about this issue. I think that when it comes to  
13 the financial mess that this state is in, when it comes to the  
14 difficult questions of health care, which everybody's aware  
15 have to be answered, and in some cases need to be asked, I  
16 think that this issue of how you treat employees is not really  
17 a priority.

18 But it must become a priority, because it is these  
19 employees who have to carry out the policies of this Governor  
20 and of this Legislature. And if those employees are not in a  
21 good spirit, if they are not functioning to their highest  
22 productivity, then you're going to have even greater problems  
23 with the little money that we have now.

24 And I think it must become a priority. It must  
25 become a priority for this Legislature to ensure that the tone  
26 and the poor attitude that exists in certain quarters of that  
27 Department are -- is not allowed to continue any further into  
28



1 this new administration of the two Chief Deputies and the one  
2 Director.

3 And I believe that -- I believe personally, not  
4 representing my organization. I must be made a distinction --  
5 I believe personally that Mr. Rodriguez wants to do the right  
6 thing. But I believe that Mr. Rodriguez and his colleagues at  
7 that Department need the constant reminder that this is a  
8 priority; that this has to be something that they incorporate  
9 into their agenda of priority concerns.

10 I will ask, as I have attempted before, but this  
11 time I won't draft any letters. I am going to ask that the  
12 onus be on the Department, perhaps not on Mr. Rodriguez  
13 directly, but on this Department, and the onus be that they  
14 submit before Coye is confirmed on the Floor, and before  
15 Mr. Rodriguez comes out of this Committee, or before he's  
16 confirmed on the Floor, that a very clear plan of action of how  
17 this Department is going to deal with what they've inherited,  
18 be presented to this Committee, and that this Committee discuss  
19 it with the individuals and groups that have raised the  
20 concerns to this Committee about this nomination.

21 To some extent, the request is an unfair one to be  
22 made to accompany Mr. Rodriguez's confirmation, because he is  
23 not responsible for affirmative action policies in that  
24 Department. It is Mr. Joseph who's the Chief Deputy for  
25 Operations who is.

26 But I do believe that many employees feel that  
27 Mr. Rodriguez must be different. Why? And herein lies the  
28







1 interesting things of ethnocentrism: his last name. A lot of  
2 employees look to Mr. Rodriguez because his last name is  
3 Rodriguez, and expect something different and more of that  
4 sensitivity.

5 And so, it is an unfair expectation at times, but  
6 it is one that I believe someone has got to say, we've got to do  
7 something now. And I believe the time is now.

8 The lawsuit that you saw in the paper two weeks ago  
9 is going to cost the state easily hundreds of thousands of  
10 dollars. We don't have a hundred thousand dollars anywhere to  
11 be spending on settling cases of discrimination. We just don't  
12 have that kind of money.

13 First of all, we don't have any business  
14 discriminating. And certainly, we don't have any business  
15 making settlements for hundreds of thousands of dollars when we  
16 shouldn't have discriminated to begin with.

17 So, I think that what I suggest is a very  
18 reasonable suggestion. I would think that some of the  
19 Department will not like me, but then, they don't like me  
20 anyway.

21 But I think it is a very reasonable request to  
22 make. I think it is a sound request, and I hope that the  
23 comments that I've made will be accepted in the spirit that  
24 I've presented them. They're not personal against Mr.  
25 Rodriguez. As I say, personally I believe he wants to do the  
26 right thing. And personally, I believe he has done a very good  
27 job insofar as discussing the policy issues that he's  
28



1 responsible for in the program.

2 But again, the constant reminder must be provided,  
3 and I believe that this Committee is the appropriate entity  
4 within the process to do that.

5 I appreciate the time, and I hope I didn't misquote  
6 you, Ms. Michel.

7 SENATOR PETRIS: Any questions of Mr. Torres?

8 SENATOR MELLO: Just a comment on his request.

9 I think you have to bear in mind that Dr. Coye's  
10 one-year date is up this Friday, which means our only session  
11 to take her, she's on the Floor now, to be put up for  
12 confirmation will be tomorrow.

13 So, I don't know if she can satisfy your request.  
14 With Mr. Rodriguez, it'll be a little bit longer than that.

15 I just don't think that Dr. Coye can respond to  
16 your request by tomorrow in the manner you want it to be.

17 MR. TORRES: I would suggest, then, that -- and I  
18 would suggest that it be as much of a bipartisan effort as  
19 possible. I believe that a letter from this Committee -- which  
20 Mr. Michel can draft very absolutely appropriately and  
21 effectively -- I think that a letter drafted from this  
22 Committee with five Members to Dr. Coye raising what I have  
23 just suggested in the manner that Ms. Michel and this Committee  
24 feel comfortable with, I think --

25 SENATOR MELLO: How about you draft a letter, send  
26 it to us, and we can refer it to her?

27 MR. TORRES: Well, I would be more than happy to  
28



1 draft that letter if the letter is taken the way it's drafted.

2 But unfortunately, I am not a Member who's elected,  
3 and I do not work for the Senate. And oftentimes, that  
4 requires editing of the work that I do, and I'd just as soon  
5 not go through that headache and disappointment.

6 So, I think it's best that it stay with this  
7 Committee. But I think the concerns and the witnesses and the  
8 letters that you have in front of you -- I'd be more than happy  
9 to comment on the letter and make some suggestions, but I'd be  
10 more than happy to work with Nancy in doing that as well.

11 I do think if it is a bipartisan effort on this  
12 issue, I think that -- I believe that Dr. Coye would get the  
13 message.

14 And contrary to the article in the paper, I do not  
15 think that Dr. Coye is being held up for personal reasons. I  
16 would like to hold up Dr. Coye for a number of other reasons,  
17 besides just Ward Valley. But, then again, I'm not elected,  
18 and I don't sit in the Senate.

19 So again, thank you very, very much. And I'd be  
20 more than happy to work with Nancy if that's necessary.

21 SENATOR BEVERLY: How do I characterize your  
22 testimony? Are you in opposition?

23 MR. TORRES: No, sir.

24 SENATOR BEVERLY: You're concerned?

25 MR. TORRES: Just with concerns.

26 SENATOR BEVERLY: Third column.

27 MR. TORRES: There you go, that third column that I  
28







1 try to always walk a fine line.

2 Thank you very much.

3 SENATOR PETRIS: That newspaper comment, quoting  
4 somebody, said -- I don't think it said personal reasons. It  
5 said "petty personal reasons", which I, as a Member of this  
6 Committee, strongly resent.

7 I've been on this Committee a long time, and I've  
8 taken on an awful lot of witnesses. I voted for 98 percent,  
9 going all the way back to Governor Reagan. I stood up to  
10 Governor Jerry Brown. We dragged out our hearings -- didn't  
11 drag them out, but took three weeks on a nomination of his, and  
12 we dumped him.

13 I've never seen the person who made that comment  
14 oppose any Republican Governor's nomination, and I think that  
15 statement ought to be withdrawn and so forth, because that's  
16 not the way we do business.

17 MR. TORRES: That's right.

18 SENATOR PETRIS: You know that as well as anybody.

19 MR. TORRES: I agree; that's right.

20 SENATOR PETRIS: Any further questions from the  
21 Committee?

22 All right, Mr. Rodriguez. We'll see you again a  
23 week from today when the other two Members, hopefully both  
24 Members, are here, but certainly at least one of them will be  
25 here.

26 MR. RODRIGUEZ: Thank you for your time.

27 SENATOR PETRIS: Thank you very much.  
28



1 [Thereupon this portion of the  
2 Senate Rules Committee hearing  
3 was terminated at approximately  
4 4:10 P.M.]  
5

6 --oo0oo--  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28




CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 28<sup>th</sup> day of May, 1992.

  
EVELYN J. MIZAK  
Shorthand Reporter







**201-R**

Additional copies of this publication may be purchased for \$5.50 per copy **plus current California sales tax.**

Senate Publications  
1100 J Street, B-15  
Sacramento, CA 95814

Make checks payable to SENATE RULES COMMITTEE.

**Please include Senate Publication Number 201-R when ordering.**

500  
29  
0.22  
13/92

HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 3, 1992  
2:10 P.M.

DOCUMENTS DEPT.

JUL 13 1992

SAN FRANCISCO  
PUBLIC LIBRARY



1 SENATE RULES COMMITTEE  
2 STATE OF CALIFORNIA  
3  
4

5  
6 HEARING  
7  
8  
9

10  
11  
12 STATE CAPITOL  
13 ROOM 113  
14 SACRAMENTO, CALIFORNIA  
15  
16

17  
18 WEDNESDAY, JUNE 3, 1992  
19 2:10 P.M.  
20  
21  
22  
23  
24

25 Reported by:  
26

27 Evelyn J. Mizak  
28 Shorthand Reporter





APPEARANCES

MEMBERS PRESENT

SENATOR NICHOLAS PETRIS, Acting Chair

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

STEFAN L. MANOLAKAS, Member  
California Horse Racing Board

DENNIS HUTCHESON, Executive Secretary  
California Horse Racing Board

RICHARD A. BILAS, Member  
State Energy Resources Conservation and Development

ARLENE N. HEATH, Commissioner  
Workers' Compensation Appeals Board

SENATOR QUENTIN KOPP

DAVID WERDEGAR, M.D., Director  
Statewide Health Planning and Development

DERRELL KELCH, Legislative Advocate  
California Association of Homes for the Aging



APPEARANCES (CONTINUED)

JANE S. WIEGAND, Commissioner  
Workers' Compensation Appeals Board

SENATOR ED DAVIS

CASEY YOUNG, Administrative Director  
Division of Workers' Compensation



INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
Statement by SENATOR PETRIS to Put Over Hearing of JOHN RODRIGUEZ, Chief Deputy Director, Department of Health Services, for One Week	1
STEFAN L. MANOLAKAS, Member California Horse Racing Board	1
Questions by SENATOR MELLO re:	
Letter Response to SENATOR TORRES's Inquiry on Ethnic, Racial and Gender Breakdown of CHRB's Employees	2
Breakdown on Stewards	3
Steps Taken to Bring about Parity	4
Influence on Filling Steward Positions	6
Statement by SENATOR MELLO on Putting Over Appointment for One Week	9
Questions by SENATOR BEVERLY re:	
Letter to SENATOR TORRES	9
Response by DENNIS HUTCHESON, Executive Secretary, California Horse Racing Board	10
Grandfathering in Existing Stewards in 1988 Legislation	10
Minority Groups on Eligibility Lists	10
Completion of Examinations	10
Stewards and Veterinarians Prohibited from Being Civil Service	11
Development of Affirmative Action Plan in 1990	11





1		
2	Placement of Women Stewards	11
3	Questions by SENATOR MELLO re:	
4	Relevancy of Examinations to Positions	12
5	Number of Minorities Actually Hired	14
6	Committee Action	17
7		
8	RICHARD A. BILAS, Member	
9	State Energy Resources Conservation and Development Commission	17
10	Background and Experience	17
11	Questions by SENATOR PETRIS re:	
12	Coordination between Commission and Air Resources Board and Public Utilities Commission	19
13	Testing Program for Alternative Fuels Vehicles	20
14		
15	Involvement of Private Companies	21
16	Japanese Claim of New Battery	21
17	Electric Cars in Other Countries	22
18	Need for Inducements	24
19	Motion to Confirm	24
20	Committee Action	25
21	ARLENE N. HEATH, Commissioner	
22	Workers' Compensation Appeals Board	25
23	Introduction by SENATOR QUENTIN KOPP	26
24	Background and Experience	27
25	Career as Attorney	28
26	Teaching Career	29
27	Career as Labor Arbitrator	29
28	Role of WCAB	30



Questions by SENATOR PETRIS re:

Numbers of Cases Handled	32
Stress Involved	32
Success of Deadline Imposition	33
Backlog	33
Motion to Confirm	34
Committee Action	35

DAVID WERDEGAR, M.D., Director Statewide Health Planning and Development	35
---	----

Background and Experience	35
---------------------------	----

Witness in Support:

DERRELL KELCH, Legislative Advocate California Association of Homes for the Aging	39
--	----

Questions by SENATOR PETRIS re:

Coordination with Local Health Officers	39
Epidemics	40
Position on Mandated Immunization of Children	40
Favorite Philosopher	41
Motion to Confirm	42

Questions by SENATOR MELLO re:

Possible Linkage between Appointee and University of California at San Francisco	42
Research Project	43
Legislative Counsel Opinion on Contract	43
Suggestion by NANCY MICHEL to Obtain Legislative Counsel Opinion on Contract while Appointee Awaits Confirmation on Senate Floor	45
Discussion	45



1		
2	Question by SENATOR PETRIS re:	
3	Fear of Undue Influence by University	47
4	Committee Action	48
5	JANE S. WIEGAND, Commissioner	
6	Workers' Compensation Appeals Board	49
7	Introduction by SENATOR ED DAVIS	49
8	Background and Experience	50
9	Questions by SENATOR PETRIS re:	
10	Tenure on Board	51
11	Flaws in System Due to Defective Statutes	
12	or Regulations	51
13	Motion to Confirm	52
14	Committee Action	53
15	CASEY YOUNG, Administrative Director	
16	Division of Workers' Compensation	53
17	Background and Experience	54
18	Motion to Confirm	56
19	Committee Action	56
20	Termination of Proceedings	57
21	Certificate of Reporter	58
22		
23		
24		
25		
26		
27		
28		





## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

SENATOR PETRIS: We have a whole bunch of appointments today. On one of the appointments, we're going to put over the hearing until, once again, next week. That's number three, Mr. Rodriguez.

Are there people here to testify on that subject? I understand you're all local, from Sacramento, so there's no problem about coming back. I wanted to let you know up front so you don't lose a lot of time unnecessarily. You're welcome to stay.

[Thereupon the Rules Committee  
acted upon legislative agenda  
items.]

SENATOR PETRIS: Now, Mr. Manolakas. Welcome back. This is, what, your fourteenth appearance?

MR. MANOLAKAS: Just the third, Senator.

SENATOR PETRIS: Did you ever get to complete your statement? I guess you did.

MR. MANOLAKAS: Yes, I did.

SENATOR PETRIS: Then Senator Mello needed to get a little more information, I recall, and he asked that this matter go over.

Are there any persons here who desire to testify either in favor or in opposition to the confirmation of Mr. Manolakas?

Senator Mello, did you have any questions?



1                   SENATOR MELLO: We got this letter back from you. I  
2 guess this was sent to Senator Torres back in April when he  
3 asked you about your ethnic, racial, gender breakdown of the  
4 Horse Racing Board's employees.

5                   Could you just briefly cover your response?

6                   MR. MANOLAKAS: Senator Mello, I had an opportunity  
7 to review that letter when it first crossed my desk a couple of  
8 months ago.

9                   That letter was forwarded to you by the Executive  
10 Secretary, Mr. Hutcheson, who's here today, and I think would be  
11 probably more thorough in discussing that letter with you, if  
12 you'd like to have him explain the contents.

13                  SENATOR MELLO: Well, that's kind of you, but I think  
14 you, as a member of the Board, probably have the responsibility  
15 for overall policy direction on how the Board will operate as  
16 far as this issue, and that is the hiring of people from  
17 different ethnic backgrounds in accordance with the population.

18                  I don't support quotas, per se, but I do support  
19 trying to bring parity to the hiring process. A lot of people  
20 have been disenfranchized, apparently: Blacks, the Hispanics,  
21 Native Americans, and so forth.

22                  What I'd like to hear from you, I've heard some of  
23 the testimony that you gave last week was sort of a broad run of  
24 what your policies might be. This is quite a lengthy report  
25 that I just got today and I haven't had a chance to really  
26 review it.

27                  MR. MANOLAKAS: Senator Mello, my understanding is  
28



1 that for the civil servants that are under the CHRB staff's  
2 direction, we are exceeding, far in excess, of the requirements  
3 imposed for the statute in the ethnic mix that we have working  
4 for the CHRB.

5  
6 It's also my understanding that the people that are  
7 contracted for with regard to the stewards that are hired, that  
8 they are not civil servants. There is no requirement, but there  
9 is a definite attempt on the part of the CHRB staff and the  
10 Stewards Committee, of which I am not a member, to bring some  
11 ethnic diversity to the stewards.

12 SENATOR MELLO: Well, the point is, whether they're  
13 civil service or not, I think that's not a proper reply to give  
14 to the people who are disenfranchized for jobs just because one  
15 position may hold an exempt status, and the other one does not.

16 But I'm interested in the overall policy, standards,  
17 of the Board, and the jurisdiction of which you have. For  
18 example, right here, as pertains to stewards, where they have  
19 51, stewards only have one Hispanic and nine female, 54 male.

20 Out of the veterinarians, you have only one Hispanic.

21 What's your response to those kind of figures?

22 MR. MANOLAKAS: With regard to the stewards, once  
23 again, I'm not on the Stewards Committee, so I don't have direct  
24 contact with the appointments and how they're made. But it is  
25 my understanding that the associate steward position was created  
26 so we can bring in additional people with the desire to have a  
27 more ethnic mix than currently exists.

28 I don't have any information with regard to the





1 veterinarians and how they are hired, and I apologize for that,  
2 but that is not something that's directly under my  
3 responsibility.

4 SENATOR MELLO: You say directly. Are they  
5 indirectly?

6 MR. MANOLAKAS: Well, I think it's yes, certainly.  
7 As a policy matter, there's no question, and I believe very  
8 firmly what I stated before, that there is a desire on the part  
9 of the Board, certainly myself, to provide additional ethnic  
10 diversity in all areas. And I think that we are making those  
11 attempts and we're succeeding.

12 SENATOR MELLO: What steps have you taken to bring  
13 about a greater parity and equity in regard to greater ethnic  
14 hiring?

15 MR. MANOLAKAS: As I indicated, with regard to the  
16 associate steward position, which was created so these people  
17 that are going to be brought up through the ranks can gain the  
18 experience that our stewards now have, that those positions, as  
19 they come up, it's my understanding that the Stewards Committee,  
20 along with the CHRB staff, are attempting to bring greater  
21 ethnic diversity as part of this new hiring practice that has  
22 been implemented.

23 SENATOR MELLO: Is that assistant to the steward an  
24 ethnic person or a female?

25 MR. MANOLAKAS: I believe they're just trying to  
26 bring more diversity. I know that --

27 SENATOR MELLO: I mean, what is gender of that person  
28



1 or the ethnic background?

2 MR. MANOLAKAS: I don't have any specifics. I know  
3 that they are making an attempt to both bring diversity in the  
4 way of ethnicity as well as gender.

5 SENATOR MELLO: You said, if I recall, that part of  
6 your action had been to bring in was it an assistant to the  
7 steward?

8 MR. MANOLAKAS: We have an associate steward  
9 position.

10 SENATOR MELLO: Now, is that associate steward  
11 position held by a female or a member of the ethnic community  
12 that are classified as minorities

13 MR. MANOLAKAS: Well, there are a number of associate  
14 stewards, and I don't have the -- either the racial breakdown or  
15 the gender breakdown. I believe it's provided in the letter.

16 Unfortunately, I just don't -- I don't have that  
17 information at hand. I know it's in there.

18 And I know, again, Mr. Hutcheson is prepared, has all  
19 that information.

20 SENATOR MELLO: If I may ask Ms. Michel if she could  
21 relate to that question from the letter?

22 MS. MICHEL: The only listing is the listing for the  
23 stewards. There's no listing here for the associate stewards.

24 And of the 51 stewards, there's one non-White out of  
25 51 on the list given to us.

26 SENATOR MELLO: One out of 51. That's about two  
27 percent.



1 MR. MANOLAKAS: I understand.

2 SENATOR MELLO: At a time when the Anglo population  
3 in California how has dropped below 50 percent.

4 MR. MANOLAKAS: I appreciate your concern. And as I  
5 indicated, I think every attempt is being made to bring  
6 additional diversity to the stewards.

7 The way the CHRB works, we operate under a number of  
8 different committees. I serve on Parimutual; I serve on  
9 Medication, and I'm not involved with the Stewards Committee.

10 I've only been a Board member now, I think, for eight  
11 or nine months, so I haven't had any direct experience as to the  
12 thought processes that one goes through in selecting the  
13 stewards, other than my contact with the Executive Secretary,  
14 and he has indicated to me that the associate steward's  
15 position, in which people are brought up and trained to become  
16 stewards, that it is through that process that we are attempting  
17 to provide more diversity, both from a gender standpoint and  
18 ethnicity.

19 SENATOR MELLO: You used the word "direct" again. I  
20 want to repeat the question I asked: don't you have any  
21 indirect influence on how these positions are going to be  
22 filled?

23 MR. MANOLAKAS: I think as a Board member, certainly.  
24 We set a policy, and that policy has to be implemented by the  
25 committee.

26 I think what I'm trying to tell you is, as a Board  
27 member, that issue has not been brought to me, and I have not  
28





1 been able to effect any policy with regard to that simply  
2 because it hasn't been an issue as of to date.

3 SENATOR MELLO: You were not aware that this  
4 imbalance was there in the department?

5 MR. MANOLAKAS: I wasn't aware that there was one  
6 person out of -- I think you said some 51 that a non-White. No,  
7 I was not.

8 SENATOR MELLO: Doesn't the Board -- I'm not really  
9 familiar with how the Board operates. I know you said you're on  
10 a certain committee, but don't they collectively deal with  
11 overall policies set forth by the Horse Racing Board?

12 MR. MANOLAKAS: Yes, certainly, the Board sets the  
13 overall policy. There's a tremendous amount of deference that's  
14 paid to the committees assigned to various tasks, and the  
15 Stewards Committee being one of those committees.

16 I just haven't been -- to be quite frank, it hasn't  
17 come up before me.

18 SENATOR MELLO: Well, a lot of things don't come up  
19 simply because we sort of live in an isolated world. But, you  
20 know, one has to look outside, beyond the isolation and see what  
21 the real world's all about, and see whether or not people in our  
22 society that are from different ethnic groups do have an  
23 opportunity to have access to employment and opportunities.

24 And this Rules Committee right here has taken a  
25 position, and we relayed this on to the Governor, that we want  
26 to see more ethnics appointed to boards and commissions  
27 appointed by the Governor. Our own appointments have been  
28



1 highly weighted towards ethnic breakdown and women appointments.  
2 And that's been an expressed policy of our Rules Committee. I  
3 believe it was taken, what, about a year ago, and that's a  
4 matter of record.

5 So, that's where we're coming from. And I think that  
6 pretty well, number one, reflects what the laws of the state and  
7 the federal government are as far as affirmative action. And it  
8 pretty well reflects, I think, what the moral concerns are that  
9 we have, to make sure that people from all walks of life have  
10 access to opportunities that are within our society, especially  
11 when they're operated under governmental rules and regulations,  
12 should follow those, not guidelines, but they should follow  
13 those examples fully.

14 MR. MANOLAKAS: And I agree with you.

15 SENATOR MELLO: Yet you say you were not aware that  
16 we only had one out of fifty-one. So, I guess you just haven't  
17 asked the questions in there as a member of that Board, even  
18 though for eight months you haven't looked around and said,  
19 "What is our hiring policy? What is our breakdown of our ethnic  
20 and gender make-up of employees that we have under our  
21 jurisdiction, both directly and indirectly?"

22 MR. MANOLAKAS: Senator Mello, directly, I know that  
23 we're, I think, at close to 40 percent in our ethnic diversity  
24 with regard to civil servants. So, I was aware of that.

25 With regard to the stewards, I know the constraints  
26 are a little bit more severe. I know that, for instance, the  
27 experience level is something that has played a significant  
28



1 factor in making sure that the stewards, who are essentially  
2 running the tracks and running the races, have that degree of  
3 experience.

4 But I also appreciate your concerns and comments,  
5 that we need to provide more ethnic and gender diversity at the  
6 stewards level. It's something that as a Board member I can, it  
7 now being brought to my attention, I can certainly look into.

8 SENATOR MELLO: Okay, thank you.

9 SENATOR PETRIS: Any others? Senator Beverly.

10 SENATOR BEVERLY: Should we vote today?

11 SENATOR MELLO: Well, I can't vote for him today  
12 personally, because I feel very strongly about ethnic make-up.

13 But I don't want to hold up his appointment, I mean,  
14 hold it up other than I would recommend putting it over until  
15 another Member of the Rules Committee gets here, and then he'd  
16 have a chance of being confirmed on that basis.

17 But you're not the first one. I have voted against  
18 probably eight or ten people for the same reasons, because I  
19 think somebody has to take a strong stand to make sure that  
20 we're going to stand up for these issues that are really  
21 important to all of us here and our country.

22 SENATOR BEVERLY: It appears he should go over,  
23 Mr. Chairman, but maybe before we do that we ought to clarify  
24 the situation on the stewards.

25 I was reading this letter as Senator Mello was  
26 questioning you. I wonder if we could have Mr. Hutcheson come  
27 up.  
28







1           You can clarify for me, apparently the Board took  
2 over the hiring of stewards in 1988. Before that, they were  
3 hired by the tracks?

4           MR. HUTCHESON: That's correct.

5           Dennis Hutcheson, Executive Secretary for the Board.

6           In July 1, 1988, the Legislature shifted  
7 responsibility for the hiring of stewards from the race tracks  
8 to the California Horse Racing Board. In that same legislation,  
9 which was SB 14, authored by Senator Maddy, the legislation  
10 grandfathered in the existing stewards. Those stewards have  
11 been working for the industry for 10, 15, 20 years, 30 years in  
12 some cases.

13           To the extent that openings become available, we have  
14 attempted to get minority groups into the eligibility lists.  
15 The numbers that you see on my memorandum to Senator Torres is  
16 an indication of the number of stewards that have been active in  
17 California, as well as the number of individuals that have  
18 passed the examinations that we have given now to encourage  
19 greater participation of minorities in the industry.

20           Those numbers simply reflect those individuals that  
21 have passed the examinations last year. Unfortunately, there  
22 were very few minorities that took the examination, and there  
23 were very few that passed the examination.

24           We -- the first year that we gave the examination, we  
25 required an 80 percent completion rate for passage. Last year,  
26 we reduced that to 70 percent in hopes of gaining more  
27 candidates to eligibility for stewards.  
28



1 Again, I would point out that we currently have four  
2 race tracks running in California: Los Alamitos, Hollywood  
3 Park, Golden Gate Fields, and Cal Expo. Cal Expo is a harness  
4 racing meet. I don't believe there are any minorities on our  
5 eligibility lists for that meeting, for harness racing.

6 We have the two thoroughbred tracks running. There's  
7 six stewards that work those two tracks. Those are individuals  
8 that have worked previously, before the Board took over July 1,  
9 1988, and are currently assigned there.

10 And I would point out that stewards and official  
11 veterinarians are personal service contractors; they are not  
12 civil service employees. The Legislature, in the Business and  
13 Professions Code, specifically prohibited them from being civil  
14 service employees.

15 So, as Commissioner Manolakas pointed out, we are  
16 making an effort to bring minorities into the steward status.  
17 When I became Executive Secretary, July, 1990, one of the first  
18 things that we did was develop an affirmative action plan, which  
19 was not required of us previously. We have tried to meet those  
20 goals. We've upped our minority staff to almost 40 percent out  
21 of some 66 staff persons.

22 My assistant executive secretary is Japanese. My  
23 assistant executive secretary of security is Hispanic. My chief  
24 investigator is Hispanic.

25 I've place two women stewards into the thoroughbred  
26 stewards' stands. They're the first two women to be in those  
27 position in the country in major thoroughbred racing. We've  
28



1 placed another female steward in the fair circuit. We have a  
2 female steward on the associate steward on the fairs.

3 And again, as Commissioner Manolakas pointed out, we  
4 will make every effort to comply with the Legislature's wishes  
5 to bring minority groups into these positions, but we have very  
6 few positions available. We have a seniority basis on which we  
7 work under. And given that, we're still attempting to bring in  
8 minorities, and we will continue, and we will relay your message  
9 back to the remainder of the Board so that they are aware of  
10 that also.

11 SENATOR BEVERLY: Thank you, Mr. Hutcheson.

12 I wanted to clarify your letter a little bit. I  
13 think Senator Mello's concerns are valid, but I thought there  
14 was more to it than we had before us.

15 I have no objection to him going over, if that's the  
16 wish of the Committee.

17 SENATOR PETRIS: Senator Mello?

18 SENATOR MELLO: Just a follow-up to that point.

19 When you said you provide them with examinations, are  
20 these examinations relevant to the job that they are applying  
21 for?

22 MR. HUTCHESON: Yes, they are relevant to the job  
23 that they're applying for. They're based on criteria and  
24 requirements that the Legislature included in SB 14. For  
25 requirements to even take the examination, which require a  
26 minimum of five years' experience as an owner, or a trainer, or  
27 a jockey, and then there are some other qualifications there  
28





1 that have to be met.

2           So, it requires that the individual be participating  
3 in the horse racing industry for a number of years and gain the  
4 knowledge that a steward requires, which is knowledge of the  
5 entire industry, so that they will have to perform various  
6 associate-official type positions to qualify to take the  
7 examination.

8           Again, we are reaching out to minority groups. I've  
9 spoken to the Jockeys Guild about minority jockeys to bring them  
10 into California as stewards.

11           The Legislature passed a bill last year which  
12 requires, to the point when feasible, that we would have at  
13 least one jockey in the stewards' stands at all times. And so,  
14 we're attempting now to recruit ex-jockeys that want to become  
15 stewards into California. I've spoken to Frank Oliveras about  
16 coming to California and working as a stewards, but he's a  
17 successful trainer. He can make more money doing that than  
18 becoming a steward.

19           We will continue and put every effort forward to  
20 bring minorities into the stewards' stands, just as we have done  
21 in the staff of the Board.

22           SENATOR MELLO: All right.

23           It's been known a lot of times you can screen out  
24 people by giving them a test that no relevancy to their duties,  
25 and that way they can never be qualified. That's point number  
26 one.

27           But the other point from your letter here, on page 4  
28



1 it says: "Minorities on List" and "Total Candidates on List".  
2 For steward, veterinary services, you have one minority and  
3 total candidates, four. Steward running races, 12 minorities;  
4 35 total on list. Steward harness races, 5 minorities; total  
5 candidates 5 on list. Medication steward, 4 out of 12.

6 The question is, how many of these minorities were  
7 actually hired?

8 MR. HUTCHESON: To date, we have not hired any of the  
9 minorities that are on the eligibility lists.

10 What we have done is, there's been three openings,  
11 and we have moved two females into those positions, and we've  
12 put one jockey into the Golden Gate Fields stand because the  
13 legislation requires that we have a jockey in the stands, and  
14 there was no jockey in the stewards' stands on the northern  
15 thoroughbred circuit.

16 We are attempting to comply with legislation that  
17 requires a jockey to be in the stands, and also comply with our  
18 own affirmative action plan, which brings more minorities into  
19 the stewards.

20 We have not had the openings to place individuals in  
21 there. The only option that we would have would be to terminate  
22 contracts with existing stewards to hire individuals off our  
23 eligibility lists.

24 SENATOR MELLO: So when you say you're making every  
25 effort, you haven't actually hired any of these minorities that  
26 are on the list then?

27 MR. HUTCHESON: We have not, but we have not had the  
28



1 openings to place those individuals into yet. When the openings  
2 do become available, which we have one at Del Mar, and I have  
3 talked to several individuals about the possibility of working  
4 at Del Mar for the meeting down there, we will place a minority  
5 in that position. And I've already spoken to a candidate about  
6 that.

7           SENATOR MELLO: But you have filled three positions  
8 with non-minorities, then?

9           MR. HUTCHESON: Pardon me?

10          SENATOR MELLO: You said you haven't had any  
11 openings, but you just said you did fill three positions from  
12 non-minorities.

13          MR. HUTCHESON: I filled them with two females, which  
14 have never been in the stewards' stands in the thoroughbred  
15 circuit, and one jockey, which is basically required by  
16 legislation in the northern thoroughbred circuit.

17          In the Del Mar associate steward position, we will  
18 place a minority into that position, and I've already spoken to  
19 two candidates about that.

20          SENATOR MELLO: Isn't affirmative action also part of  
21 the law?

22          MR. HUTCHESON: Affirmative action is part of the  
23 law. These are personal service contracts, and it -- the law  
24 requires that we look into minority hiring practices in  
25 fulfilling those contracts, and we are doing that.

26          SENATOR MELLO: And I've heard these words before,  
27 when you say "we're looking into it," "we're trying to the  
28





1 extent possible," that just doesn't get it. You know, you  
2 either have to do it or not do it. And your looking at  
3 something, it means just looking at something.  
4

5 And trying to the fullest extent possible, we can go  
6 -- you know, when I see an advertisement for employment and it  
7 says, "We are an equal opportunity employer," well you can be an  
8 equal opportunity employer and never hire a minority.

9 And like in the high jump, you set the barrier up so  
10 high they can never jump over it.

11 Okay, I don't want to belabor the point. But I just  
12 want to give another strong message to appointees that come  
13 before the Committee: there's one Member here of the Rules  
14 Committee, that I just feel we have to do a better job of  
15 reaching out to minorities and to women and other ethnic groups  
16 than we're doing. And it's come to my attention, you know, that  
17 the Horse Racing Board probably has one of the worst records in  
18 the State of California for doing that.

19 And you're the Executive Secretary, and he's a Board  
20 member. You use words like, "they're not directly under us." I  
21 mean, you know, that's a cop out. Anything that's under your  
22 jurisdiction is your responsibility, as far as I'm concerned.  
23 And the job just has to get done.

24 You're going to face lawsuits and face some  
25 tremendous things that are going to be very unpleasant, because  
26 people are getting impatient for waiting.

27 MR. HUTCHESON: Your point is very well taken, and I  
28 will keep you personally apprised of our movement forward in



1 this area.

2 SENATOR PETRIS: Any other questions?

3 We'll put it over, because the other two Members  
4 won't be here today.

5 We're going to have to ask you to come back again.  
6 I'm sorry. It'll be a week from today.

7 SENATOR BEVERLY: Perhaps for vote only?

8 SENATOR PETRIS: Yes, for vote only. We won't go  
9 through, won't need to go through, any more testimony. You've  
10 been up here three times now.

11 So, the motion is that this go over a week for vote  
12 only. We'll see you next week.

13 Mr. Bilas, Energy Resources Conservation and  
14 Development.

15 MR. BILAS: Correct.

16 SENATOR PETRIS: You were here last week, too;  
17 weren't you?

18 MR. BILAS: Several weeks ago, Senator, and I was out  
19 of town the last two weeks. So, I'm pleased to be back here  
20 today seeking your approval.

21 SENATOR PETRIS: Did you make your opening statement  
22 then?

23 MR. BILAS: I did not. And I have a very short  
24 statement that I'd like to make.

25 SENATOR PETRIS: Okay, tell us why we should vote for  
26 you.

27 MR. BILAS: Let me say first that I am pleased to be  
28



1 here, and pleased that Governor Wilson has chosen to reappoint  
2 me to the California Energy Resources Conservation and  
3 Development Commission. I am here clearly to seek your approval  
4 and confirmation so that I will have the opportunity to continue  
5 in my efforts to help move the state into the next century with  
6 a sound economic and environmentally balanced energy policy.

7  
8 I've spent five years on the Commission, one full  
9 term. And I think it would be unfair of me to take credit for a  
10 lot of things that have been done. Certainly the staff at the  
11 Commission has been most helpful, and certainly all of the  
12 participants, both from the public and private sectors, have  
13 been helpful to me in learning the many complex energy issues  
14 that exist for the State of California.

15 Specifically, Senators, California is fortunate, I  
16 think, that we now have more interstate gas transmission  
17 capacity than we had five years ago. We have effective gas-on-  
18 gas competition with a new source of supply coming in from  
19 Wyoming, which just started in April of this year. That was a  
20 five-year battle that the Commission fought, and was fortunate  
21 enough to have the lead in that battle.

22 We have the most effective energy emergency  
23 preparedness plan in the country, as out of all the 50 states.  
24 Indeed, our plan, which was revised in 1988 and will be revised  
25 again in 1993, and I was in charge of the revision in '88, is a  
26 plan that has been copied by at least 10 other states in the  
27 United States.

28 We currently have the toughest energy building





standards in the nation, and yet they are cost effective. These standards were to have gone into effect in July of this year, but they will not go into effect for reasons that all of the manuals and documents are not yet available, but they will go into effect on the first of January, 1993. This was a consensus plan through the builders, architects, and other participants, environmentalists, and I was in charge of those standards.

In our 1990 Electricity Report, we were the -- one of the few states to take the challenge to try to build in environmental values for pollutants, and we are revising that in our 1992 Electricity Report.

There is, I believe, clearly more to be done, and I would certainly like to be a participant in doing more for the State of California in its quest for an effective energy policy.

I'm open to any questions that you gentlemen might have, and hopefully, I will be able to answer them.

SENATOR PETRIS: Does anyone have questions?

Let me ask you a couple. You have some overlapping functions both with the PUC and the Air Resources Board.

MR. BILAS: That's correct.

SENATOR PETRIS: Is the coordination between those three active, or just haphazard, or none at all?

MR. BILAS: It's -- well, none at all is not correct.

In some instances, Senator, the coordination works very well. In other instances, clearly, one ought to step back and take a better look at what's happening and how we could



1 better coordinate.

2 I think we're doing a reasonable job with the Air  
3 Resources Board; although, clearly our jurisdictions do, in some  
4 issues, overlap.

5 We clearly could do a better job, however, with our  
6 sister agency in San Francisco, the Public Utilities Commission.  
7 This has been rather difficult and, in some instances, strained.  
8 Although I must say, recently, when we adopted our 1990  
9 Electricity Report, that became the foundation for their  
10 Biennial Update proceeding through which they were going to put  
11 out -- they will put out the first competitive bid for new  
12 generation resources in the state. And the foundation for their  
13 competitive bid will be the 1990 Electricity Report almost in  
14 total. And so, I think there was a clear example of cooperation  
15 being possible, and I think that I look forward to this being  
16 carried on at every level between the two commissions.

17 SENATOR PETRIS: Now, with the ARB announcing their  
18 goals, not just goals but mandates for emission and promoting  
19 alternate fuels, is your testing program going to continue?

20 MR. BILAS: Testing of alternative automobiles?

21 SENATOR PETRIS: Alternative fuels.

22 MR. BILAS: Our alternative vehicles program  
23 certainly will continue, and I would hope that we will be  
24 active, not only at the alcohol fuel level as we have been, but  
25 more active at the compressed natural gas alternative fuel  
26 vehicles. We've been quite active in that recently, and indeed,  
27 with the electric vehicle development program.  
28



1           There is a fine line, of course, between how far you  
2 go in the development program and when commercialization begins,  
3 and we're trying to find where that line is with all of our  
4 alternative fuel programs.

5           SENATOR PETRIS: Are there any private companies  
6 working on the developing an electric car?

7           MR. BILAS: Well, certainly General Motors,  
8 certainly, with their Impact.

9           Right now, the development of the electric vehicle  
10 will, I believe, be a function of the ability of the battery  
11 consortium to develop batteries that will give more range  
12 between recharging of the vehicles. That's an active  
13 consortium, and I'm not, quite frankly, at this moment, up to  
14 date on just how far they have gone. I don't think there have  
15 yet been significant breakthroughs, but there will be electric  
16 vehicles on the road in the very near term.

17          SENATOR PETRIS: It seems to me I read quite a few  
18 months ago, might have been last year, about a claim made by a  
19 Japanese company that they had developed a battery which was  
20 smaller, much more powerful than anything anywhere else, which  
21 would enable an automobile to increase its range by an enormous  
22 amount. And the thing that really caught my attention was, it  
23 took -- they claimed it would take only about 15 or 20 minutes  
24 to recharge instead of hours.

25          Are you familiar with that?

26          MR. BILAS: I read the same article, Senator. I had  
27 -- I took the article to our staff, and we have attempted to  
28







1 follow up on that, and I have not gotten any feedback, but I  
2 read the same article.

3 SENATOR PETRIS: I'd certainly be interested.

4 MR. BILAS: I would certainly be interested in that,  
5 too.

6 We have -- we have looked -- we have checked on that  
7 at the staff level. I have not had feedback. I simply do not  
8 know what the status of that battery is.

9 I would -- I would have to say that clearly it is not  
10 a commercial battery at this point, because there are no  
11 electric vehicles that are using those batteries. All the  
12 electric vehicles that are on the road today, or that are in the  
13 test stage, to my knowledge, are using the standard lead acid  
14 batteries.

15 The consortium is trying to do something about that.

16 SENATOR PETRIS: Are there any electric cars in  
17 Japan?

18 MR. BILAS: I do not know. I do not know.

19 SENATOR PETRIS: Or any other --

20 MR. BILAS: I would presume that with the Japanese  
21 automobile manufacturers, there are some test electric vehicles  
22 in Japan, just as there are test electric vehicles in the United  
23 States.

24 SENATOR PETRIS: What about England? England thirty  
25 years ago had trucks and all kinds of vehicles.

26 MR. BILAS: They had some vans some years ago. I do  
27 not know the status of their development.  
28



1 I would have to say that the development of the  
2 electric vehicle in this country is probably at least at the  
3 level of the development of the comparable vehicle in other  
4 countries simply because of the transfer of information. But I  
5 do not know that for a fact.

6 That, frankly, Senator, is not one of the areas that  
7 I have had any responsibility for at the Commission.

8 SENATOR PETRIS: You're just curious about it.

9 MR. BILAS: Yes, I am curious about it. I think we  
10 all ought to be with environmental protection a major issue, and  
11 with resource diversity and fuel diversity as a major issue. We  
12 need to be sensitive to this.

13 SENATOR PETRIS: Well, I was in England in 1966, and  
14 I met with people in their government and some private people  
15 working on this problem. And they had fork-lifts, and they had  
16 garbage trucks. They had milk delivery wagons; they had trucks  
17 with cranes, all powered by electricity way back then.

18 Now, I don't know what they've been doing since, but  
19 we didn't have anything like that here, except when I was a  
20 little boy, there was a Merchants Express, green and red trucks,  
21 powered by electricity. A whole fleet of trucks delivering  
22 various merchandise around town with hard rubber wheels and  
23 spoke wheels, wooden, I guess.

24 I'm talking grammar school days, and for me, that's,  
25 you know, that's a good hundred years ago.

26 MR. BILAS: Grammar schools days --

27 SENATOR PETRIS: They weren't horse-drawn. They made  
28



1 that whining sound --

2 MR. BILAS: -- probably the same time back in my  
3 youth, we had electric vehicles on the East Coast, in New  
4 Jersey.

5 SENATOR PETRIS: So how come we haven't advanced  
6 beyond that since then? We haven't even caught up.

7 MR. BILAS: Senator, you are asking the wrong person.  
8 I don't know why we have not caught up.

9 SENATOR PETRIS: Well, maybe we ought to give them  
10 some inducements. I have to revive some bills I had that would  
11 give lots of monies to a corporation or individual who came up  
12 with a good clean electric car.

13 MR. BILAS: Clearly, incentives are what make the  
14 marketplace function, and I think any --

15 SENATOR PETRIS: That's why I did it.

16 MR. BILAS: -- any inducements to develop alternative  
17 fuel vehicles that are efficient, I think, are worthwhile  
18 endeavors.

19 SENATOR PETRIS: Any other questions?

20 Anyone here care to testify for or against the  
21 confirmation?

22 Okay, if not, Senator Beverly.

23 SENATOR BEVERLY: Move the Committee recommend  
24 approval of the nomination.

25 SENATOR PETRIS: We have a motion by Senator Beverly.  
26 Call the roll.

27 SECRETARY WEBB: Senator Beverly.  
28





1 SENATOR BEVERLY: Aye.

2 SECRETARY WEBB: Beverly Aye.

3 Senator Mello.

4 SENATOR MELLO: Aye.

5 SECRETARY WEBB: Mello Aye.

6 Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Petris Aye.

9 Senator Craven. Senator Roberti.

10 Three to zero.

11 SENATOR PETRIS: Okay, we're recommending approval of  
12 the confirmation.

13 MR. BILAS: Gentlemen, thank you very much.

14 SENATOR PETRIS: Good luck.

15 MR. BILAS: Thank you.

16 SENATOR PETRIS: Mr. Rodriguez will go over, and item  
17 number four is Arlene Heath, Workers' Compensation Appeals  
18 Board.

19 Senator Kopp has express an interest.

20 Before we go any further, can you tell me, I've been  
21 looking for the numbers here, we usually have that. How many  
22 members are there on that Board, about 600?

23 [Laughter.]

24 SENATOR PETRIS: It seems that every week, we have  
25 two nominees for this Board. It just never ends. I'm happy to  
26 see you, but how many are there, anyway?

27 MS. HEATH: There are seven positions, of which there  
28



1 are now six appointees.

2 SENATOR PETRIS: Seven times six is 42.

3 [Laughter.]

4 SENATOR PETRIS: There's only seven; is that it?

5 MS. HEATH: Yes. In fact, one of them --

6 SENATOR PETRIS: How many vacancies?

7 MS. HEATH: One.

8 SENATOR PETRIS: One?

9 MS. HEATH: Of the seven positions, there is one  
10 vacancy.

11 SENATOR PETRIS: Not counting yours. Yours is  
12 filled.

13 MS. HEATH: That's right.

14 SENATOR PETRIS: Okay, I just wanted to clear that  
15 up.

16 Senator Kopp.

17 SENATOR KOPP: Thank you, Mr. Chairman, Members of  
18 the Rules Committee.

19 I'm delighted and honored to present to the Committee  
20 for recommended confirmation Mrs. Arlene Heath, an attorney par  
21 excellent whom I have known more years than either one of us  
22 wants to admit. But to be accurate, I have known Mrs. Heath for  
23 about 32 years as a practicing attorney in San Francisco.

24 Her curriculum vitae, obviously, speaks for itself.  
25 She is a former professor at the Golden Gate University School  
26 of Law. She has practiced assiduously for more than three  
27 decades in San Francisco and the Bay Area.  
28



1           As a matter of fact, she comes from a legal family.  
2 Her husband, who is not here today for confirmation, is a  
3 long-time San Francisco lawyer. As a matter of fact, he  
4 practiced law in the '60s with a firm specialized in labor law,  
5 representing unions and employee organizations, and then went on  
6 to a different career in administration.

7           But Mrs. Heath is conscientious. She's intelligent.  
8 She might even be described, although I may be taking a risk  
9 here, as kind of a pioneer in terms of women lawyers in San  
10 Francisco. At the time she began practicing, there weren't very  
11 many.

12           In the vernacular, in the parlance, she's paid her  
13 dues, Mr. Chairman. You and I remember those days.

14           SENATOR PETRIS: Yes, very few and far between.

15           SENATOR KOPP: It's far different from today, when in  
16 my son's law school, over half the class is female.

17           She's honest, and she's scrupulous in her dealings  
18 with people.

19           So, I recommend her most highly as extremely well  
20 qualified.

21           SENATOR PETRIS: Thank you, Senator.

22           Well, with that start, do you have anything else to  
23 tell us as to why we should support you?

24           MS. HEATH: Well first, I wish to thank you, and I  
25 wish to express to you just how pleased and how proud I am to be  
26 here this afternoon seeking your approval of the Governor's  
27 decision to appoint me to this very important post.  
28





1           Let me begin by telling you of my educational  
2 background. I received my undergraduate degree from U.C.L.A. I  
3 was Phi Beta Kappa, and I graduated with honors. I received my  
4 law degree from U.S.C., where I was a member of the Order of  
5 Coif and editor of the Law Review, and graduated third in my  
6 class.

7           I might also add that I had no family financial  
8 support while I was either in college or in law school. I  
9 worked to support myself through school with the additional  
10 assistance of scholarships and loans, and so on.

11          SENATOR PETRIS: What year did you get your law  
12 degree?

13          MS. HEATH: I graduated in 1959, June of 1959. And I  
14 was -- I took the Bar immediately and was admitted.

15          I have spent most of my professional life in three  
16 separate but complementary professions: that of attorney, that  
17 of teacher, and that of arbitrator.

18          My career as a practicing attorney has occupied the  
19 greatest portion of my professional life. I've had experience  
20 in a wide variety of legal fields, everything from probate to  
21 divorce, from landlord-tenant to labor. I have been a trial  
22 attorney in both civil and criminal cases. I have acted as  
23 counsel to a state agency charged with the enforcement of the  
24 state's securities laws.

25          Immediately prior to my appointment to the WCAB, I  
26 was counsel for the State Compensation Insurance Fund, where I  
27 specialized in workers' compensation law.  
28



1           In addition to the active practice of law, I have  
2 also been a teacher. For the most part, I taught part-time in  
3 law school, mainly Golden Gate University. And this was usually  
4 as an adjunct to my activities as a practicing attorney. I have  
5 taught criminal law and other courses in the Law School. I have  
6 also taught undergraduate courses in business law, and so on.

7           By far my highest satisfaction as a teacher came from  
8 the five years I spent teaching in the Ivory Coast and Mali.  
9 These are two French-speaking countries in West Africa. I  
10 taught English as a foreign language at the University of  
11 Abidjan in the Ivory Coast.

12           I also taught English to health professionals, to  
13 agricultural students, and business students. All of them  
14 either Malian or Ivorians; that is, natives of the Ivory Coast.

15           But my greatest challenge, and my greatest rewards  
16 came from teaching both French and literacy to adults,  
17 primarily women, who had never had the advantage of any formal  
18 academic training.

19           My third major professional career was as a labor  
20 arbitrator. I served as the neutral arbitrator in over 100  
21 cases. My function was to adjudicate the rights of the parties  
22 under a collective bargaining agreement. I conducted the  
23 hearing, heard the witnesses, evaluated the evidence, and  
24 rendered a written decision. Only one of my decisions was ever  
25 appealed to a higher court, and in that case the court upheld my  
26 decision.

27           I have been serving as Commissioner since September  
28



1 of last year. During that time, I have participated in over a  
2 thousand decisions.

3 I first would like to talk very briefly about my role  
4 at the Board and the role of the Board.

5 California, as you know, adopted a workers'  
6 compensation system in the early part of this century. The  
7 California Constitution was amended to provide for a system of  
8 getting the rights of injured workers taken care of, and I  
9 quote, "expeditiously, inexpensively, and without encumbrance of  
10 any character," end quote.

11 As it happens, I think the vast majority of workers  
12 who are injured on the job get the benefits due to them in a  
13 timely fashion. However, there are always instances where the  
14 parties cannot settle their disagreements. When that happens,  
15 the process of adjudicating the differences is set in motion.

16 In most cases, it is the injured worker who seeks the  
17 assistance of the Board, but not always. In a not insignificant  
18 number of cases, it is the employer, the insurance carrier, or  
19 the provider of medical or other services who sets the process  
20 in motion.

21 Even after the jurisdiction of the Board is invoked,  
22 most parties go on to settle their differences on their own.  
23 The Board is called upon only to approve any settlement, to make  
24 sure that no unfair advantage has been taken.

25 The remaining cases, that is, those in which the  
26 parties are unable to settle their differences, are heard and  
27 decided at a hearing presided over by a Workers' Compensation  
28





1 judge. The judge holds a hearing and renders his decision. In  
2 most instances from these cases, that is the end of the  
3 proceedings. The parties accept the decision of the Workers'  
4 Compensation judge.

5  
6 However, a party who is dissatisfied with the  
7 decision has the ability to seek further review by the Workers'  
8 Compensation Appeals Board, and usually this is by way of what  
9 is called a Petition for Reconsideration. It is the review and  
10 disposition of these Petitions for Reconsideration that  
11 constitute the major portion of the responsibilities of the  
12 Commissioners.

13 So, every case that comes to the Commissioners  
14 represents a very real conflict. The parties were unable to  
15 settle their differences without the assistance of the Board. A  
16 judge has listened to their case and has made a determination.  
17 And even then, at least one of the parties feels that his or her  
18 rights have not been vindicated and seeks review by a higher  
19 authority.

20 So thus, the cases which reach the Commissioners tend  
21 to have a long history, and as one might expect, feelings can  
22 run very high. And it is at that point in time that the  
23 Commissioner is called upon to use his or her skills to resolve  
24 the conflict.

25 The cases present a challenge to a Commissioner to  
26 analyze the facts, apply the correct law, and come to a just  
27 decision. There are often voluminous records, including highly  
28 technical medical reports, which must be reviewed.



1 I believe that my own life experience, my education,  
2 professional training, and temperament well suit me to deal with  
3 the legal, factual, and medical analysis necessary to resolve  
4 the disputes. The variety of my life's experiences have given  
5 me the flexibility to deal with the various scenarios which come  
6 before me. My years as an arbitrator have taught me to be  
7 comfortable with making decisions. My years at the State  
8 Compensation Insurance Fund have given me a special expertise in  
9 the field of workers' compensation law.

10 I would say that first and foremost, I never forget  
11 that my decision has a profound effect on the lives of the  
12 people who come to the Board for assistance. I would say that  
13 my approach, I might even say my philosophy, is to consider the  
14 rights of each party as I would hope that my rights would be  
15 considered were I in their place.

16 Thank you, Senators, for your kind attention.

17 SENATOR PETRIS: Thank you.

18 Any questions from the Members?

19 Anyone desire to testify in the audience?

20 How many cases do you handle?

21 MS. HEATH: As a Commissioner, I don't have an  
22 accurate statistic, but I would imagine we review about 40 or so  
23 a week, maybe more. That's not a precise number, Senator; it  
24 varies. Sometimes the numbers go up, sometimes they're --

25 SENATOR PETRIS: Is that stressful?

26 MS. HEATH: It's a challenge.

27 SENATOR PETRIS: More than trying a case?  
28



1 MS. HEATH: They both present -- each function  
2 presents its own challenge, I believe.

3 SENATOR PETRIS: That seems to be a buzz word now  
4 considering any matter involving workers' comp. They have it in  
5 the T.V. ads now. What was the name of that report? It's a  
6 deodorant manufacturer that gave its name to a report regarding  
7 stress on the job, and recommends use of this deodorant because  
8 everybody has stress on the job; therefore, everybody should use  
9 this particular deodorant. So, I guess it applies to any kind  
10 of work you do.

11 How is the '89 statute that imposes a deadline for  
12 hearing cases working out?

13 MS. HEATH: Well, those cases are just now beginning  
14 to go through the system. It does take a while for somebody who  
15 is injured in 1990 to have their case heard. And I have not  
16 seen any statistics on that in order to evaluate it.

17 SENATOR PETRIS: It's too early?

18 MS. HEATH: It's just beginning, since the law took  
19 effect January 1, 1990.

20 SENATOR PETRIS: Yes, that's not a lot of time.

21 How do you measure the backlog? In terms of days?

22 At the lower level, they measure it in terms of shelf  
23 feet: shelf feet of files or correspondence.

24 Do you have the same system, or do you have a  
25 backlog? Maybe you're all caught up.

26 MS. HEATH: To be honest with you, as a Commissioner,  
27 I'm really not that involved in the administrative side. I  
28





1 could certainly find out the statistics, but I do not have them  
2 available at this time. I really don't know.

3 SENATOR PETRIS: I was wondering if it's bad enough,  
4 if you're under a lot of pressure to keep moving it along when  
5 they get to your level.

6 MS. HEATH: Well, we hope to handle things  
7 expeditiously. The parties, if nothing else, the parties are  
8 anxious to have their cases resolved, and I think that's very  
9 important.

10 SENATOR PETRIS: Does this take all your time now,  
11 full time?

12 MS. HEATH: Yes, this is a full-time job.

13 SENATOR PETRIS: Any other questions?

14 SENATOR BEVERLY: Move the Committee recommend  
15 confirmation.

16 SENATOR PETRIS: We have a motion for confirmation.  
17 Call the roll.

18 SECRETARY WEBB: Senator Beverly.

19 SENATOR BEVERLY: Aye.

20 SECRETARY WEBB: Beverly Aye.

21 Senator Mello.

22 SENATOR MELLO: Aye.

23 SECRETARY WEBB: Mello Aye.

24 Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Petris Aye.

27 Senator Craven. Senator Roberti.  
28



1 Three to zero.

2 SENATOR PETRIS: Your nomination will go to the  
3 Floor. It's up to Senator Kopp and the rest of the Senators to  
4 take it from there.

5 MS. HEATH: Thank you very much.

6 SENATOR KOPP: Thank you, Mr. Chairman.

7 SENATOR PETRIS: You're welcome.

8 We'll take a five-minute recess.

9 [Thereupon a brief recess was taken.]

10 SENATOR PETRIS: The Committee will resume its  
11 meeting.

12 We have two Members, and a third will be here  
13 shortly. We can proceed as a subcommittee for the time being.

14 Now we have Dr. David Werdegar, Statewide Health  
15 Planning and Development.

16 Am I pronouncing it correctly?

17 DR. WERDEGAR: That is correct.

18 SENATOR PETRIS: You've had a chance to see some of  
19 the other nominees in the ritual, so tell us why it's a good  
20 idea to support you for confirmation.

21 DR. WERDEGAR: Thank you.

22 I'll tell you a bit about myself. I've been a  
23 physician here in California for 35 years, since the time I was  
24 an intern at the University of California in San Francisco.

25 Actually, most of my career was associated with the  
26 University in San Francisco, with the Medical School, where,  
27 over time, I would say my best contributions were in the arena  
28



1 of training physicians and nurses, mainly, for career in primary  
2 care, family medicine. And the areas in which I taught medical  
3 students and had great interest had to do with health care in  
4 the context of family, culture, community, and those factors  
5 that presented obstacles to health care.

6 My career took a significant turn in late 1984, when  
7 I was asked by then-Mayor Diane Feinstein to serve as the head  
8 of the Health Department in San Francisco. It was the  
9 beginnings of the AIDS epidemic. I had been significantly  
10 involved in teaching at the San Francisco General Hospital and  
11 was the School's Associate Dean out there. But that was the  
12 center of care at the beginning of the epidemic for those with  
13 HIV. Whether that was the reason, I actually don't know how  
14 exactly she got my name and called on me. I didn't ask her that  
15 question. But she got my name and asked if I would consider the  
16 position, and after initial reluctance, I did that and served,  
17 as it turned out, for three years for Mayor Feinstein and for  
18 three years with Mayor Agnos.

19 At the end of the fifth year, however, I felt I had  
20 made my major contribution there and should return to the  
21 University, and so gave a year's notice in which to find a  
22 successor at the Health Department, and then returned to the  
23 University in the fall of 1990.

24 It was in the spring of this past year, 1991, that I  
25 was asked to consider the job at the Office of Statewide Health  
26 Planning, and then was appointed last July by Governor Wilson.

27 I was very interested in the position because it did  
28





1 coincide with many of my interests, and I saw it as a unit of  
2 state government that could make in these times an exceptional  
3 contribution. As its name suggests or connotes, it's an office  
4 that's devoted to statewide health planning and statewide health  
5 development.

6           In the health development sphere, I think its most  
7 important roles are in helping support family physician and  
8 nurse practitioner training, and in helping recruit more young  
9 men and women of minority backgrounds into the health  
10 professions. And it has in each of those arenas an excellent  
11 track record, which was attractive to me in accepting the post.

12           It also plays a role in the development of  
13 facilities, health facilities for California through its very  
14 important Cal Mortgage Program, which guarantees the financing,  
15 the mortgage financing, for health care facility construction.  
16 And while that was not a program of initial interest to me,  
17 since it was in the world of finance and bonds and investment  
18 counselors, I quickly learned that it was an especially  
19 important program because it is the access to funding for many  
20 health care facilities who might not otherwise be able to  
21 develop their facilities, especially, to my view, small  
22 community-based organizations, substance abuse treatment  
23 centers, primary care clinics, facilities of that sort.

24           So, those were the -- that's what the department, the  
25 Office of Statewide Health Planning does in terms of health  
26 development in California, speaking very briefly to the point,  
27 but health personnel development and facilities development.  
28



1           And the other part of the Office's obligations are in  
2 the realm of planning. Let me just interject parenthetically in  
3 facilities, we do have a responsibility also of checking that  
4 health care facilities are seismically safe and have -- meet the  
5 fire, life safety conditions, and a part of our department is  
6 devoted to that task. We have a Facilities Branch that is  
7 involved in all hospital construction to be sure that it's  
8 seismically safe. It stems from Senator Alquist's legislation,  
9 to be sure that hospitals are built with recognition of  
10 California's earthquake problems.

11           Now, turning to the planning side, I believe that the  
12 Office has a contribution, an important contribution, to make in  
13 these times in which health care issues have really risen to the  
14 fore, as we look at our domestic issues and social concerns.  
15 I'm aware of your legislation, Senator Petris, in this regard,  
16 at least with regard to health insurance. But I think issues of  
17 insurance coverage, access to health care, containing the costs  
18 of health care, those are now dominant and exceedingly important  
19 issues.

20           I would like to believe that, based on the background  
21 of experience that I've described to you briefly, I would  
22 persuade the Rules Committee that I have qualifications as I  
23 have a background of experience and education from a number of  
24 realms that might contribute in this important sphere.

25           SENATOR PETRIS: Thank you very much.

26           Any questions from the Members?

27           Anyone in the audience desire to testify?  
28



1                   This statewide planning has to do mostly -- did you  
2 want to testify?

3                   MR. KELCH: Just very quickly.

4                   SENATOR PETRIS: Okay, let us have your name and  
5 organization, if you're representing one.

6                   MR. KELCH: Yes, Derrell Kelch with the California  
7 Association of Homes for the Aging.

8                   We have submitted a letter in support of  
9 Dr. Werdegarr, and just quickly indicate that in the short time  
10 that we have worked with Dr. Werdegarr, we have found him to be  
11 accessible. We had the privilege of having a lengthy meeting  
12 with him shortly upon his arrival, and we were impressed with  
13 the amount of knowledge he had, particularly in the area of  
14 long-term care, and a feeling of his commitment to older people  
15 and to long-term care.

16                   And so, we would like to offer our support and urge  
17 your aye vote.

18                   SENATOR PETRIS: Thank you.

19                   Long-term care is included in my bill that the Doctor  
20 mentioned. I guess you're aware of that.

21                   MR. KELCH: Yes.

22                   SENATOR PETRIS: Do you do a lot of coordinating with  
23 local county health officers in the planning area at all?

24                   DR. WERDEGAR: I hope that we will have a significant  
25 role in that regard.

26                   I know the health officers quite well, naturally,  
27 from having served for six years and being part of that  
28







1 organization. And in fact, of course, when working at the local  
2 level, we had our own perceptions of how things were up in  
3 Sacramento. And I hope I bring some of that experience now to  
4 Sacramento in making local health officers and health directors  
5 feel comfortable, feel that they have a receptive ear in  
6 Sacramento, and that we in the Health and Welfare Agency  
7 understand the very tough problems with which they're dealing.  
8

9 We've been meeting with them on such issues as how  
10 data is collected, and what is useful and what isn't, and what  
11 is relevant for policy and planning and accounting to see that  
12 good health care is being given. We've talked with them quite a  
13 bit about realignment, and the funding issues that surround  
14 realignment for local health departments.

15 SENATOR PETRIS: How about epidemics? Do you work on  
16 that?

17 DR. WERDEGAR: Well, my significant --

18 SENATOR PETRIS: We've got tuberculosis stalking us  
19 in the prisons and elsewhere, and measles has been on the  
20 increase.

21 Is that part of your jurisdiction?

22 DR. WERDEGAR: It isn't now. I would say that's more  
23 the Department of Health Services, Dr. Coye's Department.

24 It was at the local level a significant  
25 responsibility.

26 SENATOR PETRIS: Years ago I carried some legislation  
27 regarding public health and included some bills on immunizing  
28 children. And it was so successful that health officers said,



1 "We don't need it anymore." Periodically, I thought we'd have  
2 to renew it, but they miscalculated. I wish we had kept it up.

3 Do you think we ought to -- is it necessary to  
4 restore the program with legislation?

5 DR. WERDEGAR: I don't know the details of the  
6 legislation to comment. I think universal access to  
7 immunization for all children in California is a necessity.

8 SENATOR PETRIS: It ought to be a standing policy;  
9 shouldn't it?

10 DR. WERDEGAR: I would wish to see that, yes.

11 SENATOR PETRIS: Who's your favorite philosopher?

12 DR. WERDEGAR: It was David Hume, although I don't  
13 know why you asked me that.

14 [Laughter.]

15 SENATOR PETRIS: You have a Master's Degree in  
16 Philosophy. I'm impressed. You've got a whole bunch of degrees  
17 here outside of medicine.

18 DR. WERDEGAR: Yeah, I've got degrees. It just  
19 happened along the way.

20 SENATOR PETRIS: Fair enough. It probably helps you  
21 in your long-range view of the world.

22 DR. WERDEGAR: Well, it allows me to be reflective  
23 from time to time.

24 SENATOR PETRIS: Was Galen much of a philosopher in  
25 addition to being a doctor?

26 DR. WERDEGAR: Some. That is to say, he saw Man in  
27 relation to the universe and some balance between the two.  
28



1           Actually, I would say that having had that  
2 undergraduate study of philosophy has oriented some of my views  
3 to health care. I mean, I see health care as -- while I  
4 treasure what the doctor does in the interrelationship between  
5 doctor and patient, at bedside or in the office, I do see health  
6 care as having a much more fundamental role in society, and  
7 perhaps view it in those philosophical terms.

8           SENATOR PETRIS: Thank you very much.

9           SENATOR BEVERLY: Move we recommend approval of the  
10 nomination.

11          SENATOR PETRIS: Senator --

12          SENATOR MELLO: Mr. Chairman, I'm most interested  
13 about the link you have between yourself and the University of  
14 California. It's similar to one we had a few months ago with  
15 Dr. Fessler from the University of California at Davis, who was  
16 appointed to the Public Utilities Commission.

17          As I understand, the arrangement you have is somewhat  
18 similar, in that the state pays your salary to the University of  
19 California at San Francisco, then they in turn pay you. And I  
20 guess this is done to maintain your retirement with the  
21 University; is that correct?

22          DR. WERDEGAR: That is correct, and maintains my  
23 tenured professorship. At the conclusion of my work in  
24 Sacramento, I would choose to return to the University to teach.

25          SENATOR MELLO: It's also true that you also get  
26 extra payments from a research contract you have there at the  
27 Medical School, in addition to your salary?  
28





1 DR. WERDEGAR: That is true. There is one research  
2 project of which I'm the principal investigator for the next  
3 four years. That is, it's a five-year commitment, and I had  
4 just recruited the staff together in this community-based  
5 project at the time that I was asked to serve, and asked and  
6 said that I thought I could continue that project, which I felt  
7 was an important one in which I had commitments.

8 It's a federally funded, through Drug Abuse Center,  
9 project. And the various parties that looked at whether that  
10 was permissible, legal, and so forth, agreed that it was. That  
11 is, it was done having laid all of the considerations out for  
12 all parties to look over and be sure it was right.

13 SENATOR MELLO: Right.

14 Have you submitted a copy of your contract with the  
15 University to the Rules Committee, Ms. Michel, or not?

16 DR. WERDEGAR: I believe our counsel for the Office  
17 of Statewide Planning has done so. Ms. Michel would probably  
18 know better.

19 I know that there was a discussion between our  
20 counsel, who's actually here, John Roscoff, and if not, the  
21 Rules Committee, the Senate Office of Research. So, I believe  
22 that's where the information was transmitted.

23 SENATOR MELLO: I think it would be proper -- do you  
24 have a Legislative Counsel's opinion as to the arrangement  
25 between your contract and the University?

26 DR. WERDEGAR: Yes. Well, there was combined  
27 consultation, I would say, of the attorneys for the University,  
28



1 for the Governor's Office, and for the counsel of the Office of  
2 Statewide Health Planning. So, I believe it was very carefully  
3 reviewed.

4           SENATOR MELLO: I think in the case -- I don't know  
5 if the Rules Committee wants to look into this or not -- in the  
6 case of Mr. Fessler, who was a professor at Davis, our  
7 Legislative Counsel, upon review of the contract, found that the  
8 arrangement there was determined to be, in the words of  
9 Legislative Counsel, to be improper for a number of reasons,  
10 mainly because they made a finding that the arrangement gave the  
11 University the potential of having undue influence over the  
12 actions and decisions of the appointee.

13           It suggested a similar potential may exist in your  
14 case.

15           DR. WERDEGAR: I think there's a --

16           SENATOR MELLO: Doctor, perhaps, I think Dr. Fessler,  
17 while he came to the Rules Committee, I think he revised his  
18 agreement. I'd have to ask Ms. Michel, if I might. I think he  
19 changed his agreement with the University to detach himself from  
20 that situation and come up with a different way of handling the  
21 retirement.

22           DR. WERDEGAR: I think to some extent mine was  
23 crafted similarly. That is, I know that the issue was  
24 discussed, and that attorneys who understand these things better  
25 than I looked at how it should be done so that it was acceptable  
26 both for state government and for the University.

27           The University -- and I knew about Dr. Fessler. I'm  
28



1 told that the nature of my appointment is somewhat different in  
2 that he is, I think, a so-called constitutional officer. I  
3 don't really understand all of these distinctions exactly, but  
4 his appointment is somewhat different than mine, and actually, I  
5 think, has a more rigid, some more rigid requirements in certain  
6 respects.

7 In any event, I believe the matter was reviewed quite  
8 thoroughly from a legal point of view. I had asked that it be.

9 SENATOR MELLO: Mr. Chairman, if I could ask Ms.  
10 Michel, was Dr. Fessler's contract with the University modified?

11 MS. MICHEL: Yes, it was changed.

12 What I might suggest to you, Senator, is that we,  
13 during the period of time when Dr. Werdegard's name is on the  
14 Senate Floor, that we get a resolution from Legislative Counsel  
15 and have an answer for you at that time, before it comes up on  
16 the Floor.

17 SENATOR MELLO: I think that would be beneficial,  
18 mainly because, while being on the Public Utilities Commission  
19 versus the University of California at Davis, there's probably  
20 very little linkage between their functions, but as Director of  
21 the Office of Health Planning in this state, linked with what I  
22 call the finest Medical School in the whole world, the  
23 University of California at San Francisco, I just talked this  
24 morning with Chancellor Julie Krevins, not because about you,  
25 but in regard to their fine medical programs there, but there is  
26 this potential of close linkage to the University there, which  
27 in my opinion, I wouldn't mind as a personal person, because I  
28







1 like them. I like the way they operate there. I think they're  
2 doing a great job. But I just think we have to separate  
3 official duties of people who are on staff, as you are with your  
4 new position here, and any linkage that you would have with the  
5 University of California at San Francisco Medical School.

6 DR. WERDEGAR: Well, I understand the concern. I  
7 would leave it to attorneys skilled in these matters, as I  
8 thought had been the case.

9 SENATOR MELLO: Let me ask Ms. Michel another  
10 question.

11 Was Dr. Fessler able to maintain his retirement plan  
12 with the University?

13 MS. MICHEL: Yes. It was arranged in a totally  
14 different way, and so it was covered.

15 SENATOR MELLO: I'm not trying to endanger your  
16 retirement, because certainly it's something you've earned, but  
17 it might be that you could enter into -- and this, of course, is  
18 up to the attorneys -- a contract, and you'd be an independent  
19 contractor with the University somehow, under the similar way we  
20 did for Mr. Fessler, that would maintain whatever benefits  
21 you're entitled to, but make the separation between an active  
22 employee --

23 DR. WERDEGAR: Right.

24 SENATOR MELLO: -- serving on a --

25 DR. WERDEGAR: And I believe that that's precisely  
26 what was done. You actually articulated it better than I was  
27 able to.  
28



1 But that matter should indeed be verified.

2 Obviously, the University has a mechanism to allow its faculty  
3 to leave and take positions in public service, since one of the  
4 recognized roles for faculty is public service.

5 And I might say that it just so happened mine is a  
6 somewhat odd career because of having been requisitioned to  
7 serve as the San Francisco Health Director. But during those  
8 six years, I was on leave from the University.

9 SENATOR MELLO: So, Mr. Chairman, I certainly would  
10 have no objection supporting his moving to go to the Floor if we  
11 could have him provide to Ms. Michel, through your counsel,  
12 perhaps, so that our Legislative Counsel can review your  
13 contract, and then in order to report back to the Rules  
14 Committee if it might require a modification of your present  
15 contract in order to bring it into conformity, as we have with  
16 Mr. Fessler.

17 So, that would be agreeable with you? Do you agree  
18 with that concept, then, of supplying the information to our  
19 staff?

20 DR. WERDEGAR: Oh, without question, sure.

21 SENATOR MELLO: Thank you.

22 SENATOR PETRIS: Do you have any fears that the  
23 University would lean on you?

24 DR. WERDEGAR: Well, first, I'm a tenured professor.

25 [Laughter.]

26 SENATOR PETRIS: I'm just observing your demeanor  
27 here. I don't think I'd want to lean on you, myself.  
28



[Laughter.]

DR. WERDEGAR: I feel I would actually give full measure and be quite independent of any University influence in the conduct of the job.

SENATOR PETRIS: Any other questions?

SENATOR BEVERLY: Move the nomination.

SENATOR PETRIS: All right, Senator Beverly moves, as he did previously, that we recommend confirmation.

Call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye.

Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Mello Aye.

Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye.

Senator Craven. Senator Roberti.

Three to zero.

SENATOR PETRIS: That's three to zero; your confirmation will be recommended to the Floor of the Senate.

DR. WERDEGAR: Thank you very much.

SENATOR PETRIS: Thank you. Good to have you with us.

DR. WERDEGAR: Thank you.

SENATOR PETRIS: And good luck.





1                   Now we have, oh, what do you know, another Workers'  
2                   Comp. Appeals Board.

3                                   [Laughter.]

4                   SENATOR PETRIS: Jane Weigand.

5                   Senator Davis, I think, is interested in this  
6                   appointment. Do you want to come forward, Senator?

7                   Do you vouch for this lady?

8                   SENATOR DAVIS: Yes, I sure do.

9                   Distinguished Members, I congratulate you on having  
10                  convinced the public that you remain here.

11                                  [Laughter.]

12                  SENATOR DAVIS: I was afraid, so I decided to retire.

13                  I've known Jane for several years, and she's a  
14                  distinguished graduate of the University of San Diego Law  
15                  School, and she has received an award as a Distinguished Alumni  
16                  there.

17                  And she has served in many important legal positions,  
18                  including as a counsel, I guess, to the U.S. Attorney's Office.

19                  MS. WEIGAND: U.S. Department of Justice.

20                  SENATOR DAVIS: Department of Justice, and received  
21                  two commendations there.

22                  She has also practiced as a deputy city attorney,  
23                  Senator Beverly, and a city attorney, who was engaged in that  
24                  practice for many years, and served as counsel for a Fortune 100  
25                  company. So, she's covered the waterfront in her practice of  
26                  law.

27                  She is someone who engages herself in community  
28



1 service, including one of my favorite charities, the Good Will  
2 Industries. She's on the Bay Area Board of Directors of that.  
3 And also in her local Rotary Club, which is now San Francisco,  
4 she's on the Scholarship Committee.

5 And she served on the State Economic Advisory  
6 Committee. And she's raised two fine sons. One is a journalist  
7 in Tokyo, and the other, whom I know and Senator Mello knows, is  
8 in our California local film industry.

9 So, her husband, Jeff, is here, is a copartner in a  
10 toxic removal firm, which is one of the great things that has to  
11 be done in our society.

12 So, I think Jane Weigand is highly qualified to serve  
13 in the position to which the Governor appointed her. I think  
14 she will do -- she will get outstanding awards for doing that  
15 job also.

16 SENATOR PETRIS: Thanks, Senator.

17 Would you like to make any further comment on your  
18 qualifications?

19 MS. WEIGAND: Thank you, Senator Davis.

20 Well, I'd like to thank you Senators for being here  
21 today. With the primary yesterday, I know you probably had late  
22 nights, and I really appreciate you going ahead with this  
23 hearing. As you know, it's a very important day in our lives,  
24 those of us here to testify.

25 I've had diverse legal background. I've served in  
26 the public sector and in the private sector. In the public  
27 sector, I've served at all three levels of government: local,  
28



1 state, and federal. And in the private sector, I've been a  
2 senior attorney for a Fortune 100 company, as well as counsel to  
3 many small business owners.

4 In addition to that, I've taught at five  
5 universities. So, all this experience, I think, has given me a  
6 balanced perspective that I bring to my present job.

7 But perhaps most importantly, I have a reputation for  
8 integrity. I'm fair. I decide the cases based on the facts and  
9 the law. And I'll do my best to be a credit to you and to the  
10 State of California if I'm confirmed.

11 Thank you.

12 SENATOR PETRIS: Any questions?

13 Anyone in the audience desire to testify?

14 How long have you been on it? Since August?

15 MS. WEIGAND: We were sworn in the last day of  
16 August, but we actually began in September.

17 SENATOR PETRIS: Are there any flaws in that system  
18 due to defective statutes or regulations that we can take care  
19 of that you want to call to our attention?

20 MS. WEIGAND: I'm sure you'll be hearing from others  
21 who've got ideas along that line.

22 We're getting acquainted, of course, with the new  
23 legislation, and we're looking at ways that we might take care  
24 of things and come back to you with some suggestions.

25 SENATOR PETRIS: I would encourage both you and  
26 Ms. Heath to do that.

27 Some of the nominees I've asked that question in  
28





1 other agencies, and they seem to be gun shy. They say, "Oh,  
2 that's not our job. Our job is simply to carry out these  
3 functions, and it's not our job to advise the Legislature.  
4 That's your job."

5 But how are going to learn about these things if we  
6 don't get it from you? We don't go to these hearings. We don't  
7 go to the Appeals Board. We get it in the form of complaints  
8 from petitioners or from lawyers.

9 But I'd think it would be helpful to us, as you move  
10 along, if you find areas that you think need improvement through  
11 some statutory change, we'd like to hear about it.

12 MS. WEIGAND: Thank you, Senator.

13 SENATOR PETRIS: So, do you promise to let us know?

14 MS. WEIGAND: I promise, my word of honor.

15 SENATOR PETRIS: Okay, Senator Beverly.

16 SENATOR BEVERLY: Move the --

17 SENATOR MELLO: I'd like, if I may, to move her  
18 recommendation to the Floor. I've known her and think very  
19 highly of her.

20 I joint with Senator Beverly in making that motion.

21 SENATOR PETRIS: All right, Senator Mello and Senator  
22 Beverly move.

23 Now, if I'm silent, I think my conduct would be  
24 suspect. So, may I join my colleagues?

25 [Laughter.]

26 SENATOR PETRIS: At any rate, we have a motion. Call  
27 the roll.  
28



1 SECRETARY WEBB: Senator Beverly.

2 SENATOR BEVERLY: Aye.

3 SECRETARY WEBB: Beverly Aye.

4 Senator Mello.

5 SENATOR MELLO: Aye.

6 SECRETARY WEBB: Mello Aye.

7 Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Petris Aye.

10 Senator Craven. Senator Roberti.

11 Three to zero.

12 SENATOR PETRIS: That's three-zero.

13 Congratulations. That means it goes to the Floor  
14 with a recommendation for your confirmation.

15 MS. WEIGAND: Thank you all very much.

16 SENATOR DAVIS: Thank you.

17 SENATOR PETRIS: Now we have Mr. Casey Young,  
18 Administrative Director, Workers' Comp.

19 MR. YOUNG: Good afternoon. Congratulations to all  
20 of you.

21 SENATOR PETRIS: Thank you.

22 MR. YOUNG: I don't have anybody to introduce me.

23 [Laughter.]

24 SENATOR PETRIS: Well, I think Senator Greene would  
25 if he were available.

26 MR. YOUNG: Should I just --

27 SENATOR PETRIS: Yes, just tell us why we should --  
28



1 MR. YOUNG: Casey Young, Division of Workers'  
2 Compensation.  
3

4 The qualifications for this position, my knowledge  
5 and experience in the workers' comp. has been acquired really  
6 all while employed by this institution, the Senate, for the last  
7 twenty years, fifteen of those years with the Senate Industrial  
8 Relations Committee.

9 During that time, I've had the privilege, I guess, of  
10 working with all the various attempts to change the system --  
11 minor ways, major ways -- become very familiar with the issues,  
12 and what's been tried to do over the years, and what the intent  
13 of the Legislature was.

14 I've got to tell you, I didn't seek this job. When I  
15 was asked about it, I had to think a least twice about it. One  
16 of the things that kept going over in my mind was, you know, I  
17 remember every one of those laws that was passed, and I don't  
18 think it was implemented, or it wasn't implemented correctly.  
19 And if I get over there, I better pay attention to that and make  
20 sure that gets done.

21 So, I really couldn't pass up the opportunity.

22 Among other things I've done is, for a year, I spent  
23 -- did double duty, basically, with Industrial Relations  
24 Committee and the Joint Committee to study the workers' comp.  
25 system. I've done a lot of, oh, conferences, and so forth, on a  
26 national level. I did a national symposium on workers' comp.  
27 last year at Rutgers. I did a similar thing at the University  
28 of Connecticut, and one for the American Bar Association.





1 I think I've got a pretty good background and  
2 knowledge in workers' comp., not just in this system in  
3 California, but overall. And we're not the only state that is  
4 having real problems with the workers' comp. system. We're all  
5 struggling. A lot of us are struggling with the same kinds of  
6 issues. And we've been talking, both NCSL, and I participated  
7 in their task force on workers' compensation, and once I took  
8 this job, they moved me over to their Blue Ribbon Advisory Panel  
9 to the task force. Very familiar with those kinds of issues.

10 I think I have a good working relationship, first  
11 with the Director of the Department of Industrial Relations. In  
12 fact, he is the person who approached me about taking this job.  
13 He is -- actually, I went to high school with him, and he was  
14 looking for somebody who was knowledgeable and who he could  
15 trust in this position. It's been a sensitive one. It's been a  
16 difficult one.

17 As you all know, this is a program that is very  
18 sensitive. It means a lot to a lot of people, especially to  
19 injured workers, but also to a lot of other people. It's about  
20 \$11.4 billion program, last I looked, and increasing fairly  
21 rapidly.

22 Also, I have, I think, a good working relationship  
23 with the various interest groups that are involved in this area.  
24 And I think you need that in this kind of a position. We're  
25 going to be dealing, I'm sure, with legislation again in this  
26 area, and I know I'm dealing with a plethora of administrative  
27 issues in this area.  
28



1                   And I think I have a reputation for being open and  
2 accessible, and I think that's what you need to do to get  
3 through the issues in this difficult area.  
4

5                   Thank you very much.

6                   SENATOR PETRIS: Well, as a Member of the Industrial  
7 Relations Committee, I can verify what you say about your  
8 experience and knowledge, certainly.

9                   Any questions? Do I hear a motion.

10                  SENATOR BEVERLY: So move.

11                  SENATOR PETRIS: Senator Beverly moves confirmation.  
12 Call the roll.

13                  Is there any opposition in the audience or support?

14                  SECRETARY WEBB: Senator Beverly.

15                  SENATOR BEVERLY: Aye.

16                  SECRETARY WEBB: Beverly Aye.

17                  Senator Mello.

18                  SENATOR MELLO: Aye.

19                  SECRETARY WEBB: Mello Aye.

20                  Senator Petris.

21                  SENATOR PETRIS: Aye.

22                  SECRETARY WEBB: Petris Aye.

23                  Senator Craven. Senator Roberti

24                  Three to zero.

25                  MR. YOUNG: Thank you very much.

26                  SENATOR PETRIS: Congratulations.

27                  MR. YOUNG: Thank you.

28                  SENATOR PETRIS: Your nomination will go to the



1 Floor.

2 [Thereupon this portion of the  
3 Senate Rules Committee hearing  
4 was terminated at approximately  
5 3:50 P.M.]

6 --oo0oo--  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28





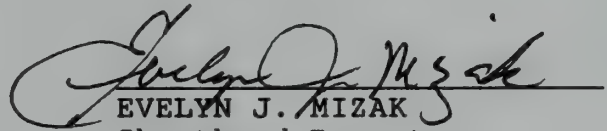
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 4<sup>th</sup> day of June, 1992.

  
EVELYN J. MIZAK  
Shorthand Reporter





**202-R**

Additional copies of this publication may be purchased for \$5.00 per copy **plus current California sales tax.**

Senate Publications  
1100 J Street, B-15  
Sacramento, CA 95814

Make checks payable to SENATE RULES COMMITTEE.

**Please include Senate Publication Number 202-R when ordering.**













